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DISABILITY AND WORK

A trade union guide to the law and good practice

This publication is an outcome of the TUC's ESF EQUAL High Road project.

The project is supporting innovative ways of promoting and facilitating equal opportunities in the workplace and mainstreaming new approaches to extending participation in learning.

PREFACE

Brendan Barber

Trade unions can rightly be proud of our contribution to disabled people's ongoing struggle to achieve equal rights. But achieving that objective remains a distant prospect.

One of the major obstacles continues to be that so many disabled people who want to work – and who can work – are unable to get or retain a suitable job. We understand that unions are in a good position to help change this situation, but that too many employers are still reluctant to play their part.

With disability discrimination law having undergone many changes in recent years, it is timely that we should produce new advice for the use of union officers and representatives on what the law has to say about disability.

This guide includes up-to-date case studies to show how the courts have interpreted the Disability Discrimination Act (DDA), and recommendations of good practice in some of the major areas of working life where experience has shown that disabled people face the worst problems.

British society is changing fast in its willingness to recognise and celebrate diversity and difference, but all too often disabled people are being left behind.

The TUC recognises that there are many good examples of employers understanding and recognising the changes they need to make in order to offer a fair deal to disabled workers, but that many do not.

Disability at Work has been written to assist unions in challenging discrimination and in negotiating good policy and practice. We will all be stronger as a result.

Brendan Barber,
General Secretary,
Trades Union Congress

Introduction

The law, Vision and Reality – A challenge for the unions

Much has changed for disabled people over the past few years, but a great deal remains unchanged too. Trade unions have worked with others to transform the legal rights that disabled people can claim and have represented disabled members in securing those rights. This booklet brings together all recent changes in the law to give union negotiators and representatives an up-to-date summary of the legal position following the introduction of the Disability Discrimination Act 2005 (DDA).

There are, in particular, changes to the definition of disability that considerably extend the scope of legal protection. There have also been a number of significant court judgments that clarify various aspects of the DDA, such as what is a reasonable adjustment. These are cited too. They should help union representatives when confronting uncooperative managers who resist making adjustments for disabled workers.

The DDA also created a set of duties for public bodies to promote disability equality and eliminate discrimination against disabled people. The potential of this new obligation is enormous, but work has to begin at once if the possibilities are to be realised. On these duties, and how unions can contribute to their development, the TUC has already published separate advice, Promoting Disability Equality: Advice for unions on the 2006 Public Sector Disability Equality Duty. This is available free of charge from the disability section of the TUC website, www.tuc.org.uk.

Changing the law has proved to be the easy part of a much greater challenge – that of ending the social exclusion of many millions of disabled people. Trade unions can play a key role in challenging this exclusion, through contributions in the workplace and in negotiations with employers, as well as through their broader role in society. This booklet outlines some of the main issues and offers suggestions on how unions can use their positions to help provide solutions.

The Government recently accepted the Cabinet Office Strategy Unit's report Improving the Life Chances of Disabled People (January 2005), which spelt out a vision of ending discrimination against disabled people by 2025. The four areas featured were:

- independent living;
- support for families with young disabled children;
- a smooth transition into adulthood;
- and improving support and incentives for getting and staying in employment.

The creation of an Office for Disability Issues (ODI) that will coordinate government action across all departments was the first step. This now exists. Proposals to reform the benefits system to encourage and support people on Incapacity Benefit to return to work will have to be another key element in the plan. Success will depend on the details of the final legislation, and, crucially, the level of resources committed to

provide the additional support required.

Statistics reveal the extent of the challenge. Among people of working age, 6.8 million (one fifth of the total population) meet the DDA definition of disability, with higher than average proportions in some parts of the country, including the North East and Wales. Not surprisingly, the proportion also increases with age, reaching 40 per cent of the total for those over 40. Of the total figure, only 51 per cent are employed, in contrast with 81 per cent of non-disabled people. This percentage has improved over the last 10 years, but not at a rate sufficient to achieve parity by 2025.

Furthermore, the raw total conceals some important variations according to the type of impairment that people may have: only 21 per cent of those with mental health issues are employed, while only 26 per cent of people with learning difficulties.

Of course, not all disabled people currently not working are either able, or wish, to enter employment, but over 900,000 who are not currently working would like to work. Finding a way to move these people into paid employment has been a government objective since 1997 and is one wholeheartedly supported by the trade union movement. Trying to bring it about, however, has been hindered by a number of obstacles, the biggest of which has been the slow rate of which the slowness in changing change in both social and employers' attitudes. Unions must redouble their efforts to help overcome resistance to employing disabled workers.

The statistics also show that disabled people who work are paid on average 10 per cent less than non-disabled people, chiefly because a higher proportion are in manual and lower-paid jobs than non-disabled people. Again, unions have a part to play in challenging the in-built structures and attitudes that perpetuate these continuing inequalities.

During 2005, the TUC supported an academic research project to survey the real experience of disabled workers in two large organisations, one a local authority, the other a large private-sector employer. Both organisations have a strong commitment to being good employers of disabled people, including having their own internal networks for disabled employees.

The findings of the survey confirmed some suspicions about where the problems faced by disabled workers were concentrated, as well as identifying some surprising differences between the two sectors. The evidence of the survey will be cited in support of the good practice proposals made in the following pages.

Part 2 of this booklet gives advice on disability discrimination law in the workplace. It is not, however, an authoritative statement of the law and should only be used as a guide. Part 3 runs through a series of common workplace issues and makes recommendations of good practice that negotiators may seek to persuade employers to implement. Part 4 deals with the specific issue of monitoring disability. The final part lists some non-trade union sources of advice and information. In most cases, union representatives and officers should be able to call upon their own union's officials or legal department for expert legal advice.

Part 2
Disability discrimination law

There have been a series of changes to the original Disability Discrimination Act 1995. The most significant of these have been the DDA 1995 (Amendment) Regulations 2003 and the DDA 1995 (Pensions) Regulations 2003 that came into force in October 2004. Additional improvements made by the Disability Discrimination Act 2005 mean the scope and coverage of the original law has been extended significantly. What follows is a summary of the DDA as it stands in 2006, as far as it relates to employment. Full text of the amended law is available from the Disability Rights Commission website, www.drc-gb.uk.

The Codes of Practice

The Government has issued Codes of Practice, prepared by the Disability Rights Commission, that accompany the DDA. There are separate codes for each of the different sections of the DDA (including education, service provision and transport). The most relevant code for unions is the one covering employment and occupation. Although not an authoritative statement of law, the code can be used in evidence in court and tribunal proceedings and must be taken into account where relevant. It is also a clearly written text, giving concrete practical examples of the meaning of the various parts of the DDA.

The TUC recommends that union officers refer to it for guidance when pressing a disability-related issue.

Unions must also always bear in mind that they themselves are covered by the DDA. Detailed advice on what is required of them is provided in the Code of Practice for Trade Organisations and Qualification Bodies.

Coverage: which workers are protected?

Although the DDA originally exempted small employers and those in particular areas of work, these exemptions have now been removed. Every employer and service provider is liable to the duties placed on them by the DDA with the exception only of the armed forces.

This extends to people working outside Great Britain too, providing the employment has a connection with this country. It also includes contract workers, office holders, partners in firms, police officers, barristers, and people undertaking practical work-experience
for the purpose of vocational training. Firefighters, prison officers, and employees on ships, planes and hovercraft registered in the UK, and workers on (UK company owned)
oil rigs are also covered.

Definition of a disabled person

The only people protected by the DDA are those who meet the definition of disability as laid down by the DDA. There have been important extensions to the original 1995 definition and many more workers now fall within the protection of the law.
The DDA states that a disabled person is someone who has a physical or mental impairment which has an effect on their ability to carry out normal day-to-day activities.

The effect must be:

- substantial (that is, more than trivial or minor);
- adverse; and
- long-term (that is, lasting or likely to last more than 12 months, or for the rest of the life of the person concerned).

There is guidance on what is meant by day-to-day activities and it should be remembered that these do not include work, or activities that only specific groups of people might do (such as sporting activities). The test of whether an impairment affects such activities is whether it affects one or more of a list of capacities:

- mobility;
- manual dexterity;
- physical coordination;
- continence;
- ability to lift, carry or otherwise move everyday objects;
- speech, hearing or eyesight;
- memory or ability to concentrate, learn or understand; or
- perception of the risk of physical danger.

The law includes hidden impairments, the code specifically stating that “mental illness or mental health problems, learning disabilities, dyslexia, diabetes and epilepsy” are included. It has also recently been extended to include cancer, HIV and multiple sclerosis, in each case from the time of diagnosis. The original qualification of a mental illness – that it had to be “clinically well-recognised” before it was counted as a disability under the DDA – has now been removed. This should make it easier for workers to claim legal protection if they develop depression or similar conditions, where in the past unsympathetic employers have been able to challenge workers’ claims with contradictory medical reports..

Where the consequences of the impairment (but not the impairment itself) are alleviated by some form of treatment, then the treatment is ignored for the purposes of the DDA. The only exception is wearing glasses or contact lenses.

People with “severe disfigurements” (but not tattoos) are protected, without having to demonstrate any substantial adverse effect. Anyone who is blind or partially sighted, and who has been registered as such, or certified as such by an ophthalmologist, is also covered.

The DDA protects people who may have had a DDA-defined disability in the past, but no longer do – someone who suffers discrimination as a result of revealing a previous

mental health condition, for example, is protected by the law, regardless of how long ago they had the condition.

Definition of disability and DDA case law: the importance of medical evidence

Many cases have been argued where the employer has resisted the contention that the individual is disabled under the DDA definition. Challenges have been made over how “substantial”the disability is, or whether it is “long-term”. Workers who claim their mental health condition or their learning difficulty constitutes a disability have also been challenged.

In all such cases, obtaining authoritative medical evidence is critical. However, unions need to be aware that where the claimant’s medical evidence is contradicted by that obtained and used by the employer, an employment tribunal is not expected to decide between the views of the specialists, but only to arrive at a “reasonable” conclusion. This means that the employer only has to show that it was “reasonable” for them to reach the conclusion they did on the basis of the medical evidence they had before them, as happened in the well-known Jones v Post Office case in 2001. In many cases, employers rely on in-house occupational health reports. Even where there are doubts over the independence of the report, the fact that medical evidence has been sought will usually be seen as justifying the actions of the employer by tribunals. A case is more likely to succeed where a worker shows the medical evidence relied on by the employer is not reasonable.

This means that when an employer disputes that a worker is disabled, union representatives will need to ensure that there is suitably qualified medical evidence supporting the member’s claim that they are covered by the DDA before challenging the employer’s evidence.

Case law in this area is continually developing as disputes are settled in court. Here are some recent examples:

Generalised learning difficulties covered
In the case of Dunham v Ashford Windows (2005), the Employment Appeal Tribunal (EAT) decided the DDA protected people with generalised learning difficulties (including, in this instance, dyslexia), as well as those with specific conditions. It also confirmed evidence from a consultant psychologist to support this was necessary.

Effects of combined conditions
In Ginn v Tesco Stores Ltd (2005), where the applicant was supported by USDAW, the EAT decided that the original tribunal had been wrong to deny that the combined effects of more than one condition – even though the conditions were unrelated – could amount to a disability if between them they caused a substantial affect on the individual’s ability to carry out normal day-to-day activities.

Asperger’s Syndrome is covered
In the case of Hewett v Motorola (2004) the EAT decided in the claimant’s favour that Asperger’s Syndrome, as a form of autism, is covered by the DDA, stating that their

greater difficulty in understanding human interaction was an adverse effect as defined in the DDA.

Treatment can have DDA implications

The important case of Kirton v Tetrosyl Ltd (2003), which has subsequently been cited in deciding other cases, saw the Court of Appeal rule that DDA protection extended to deal with situations where a person's impairment was the result of the treatment they received for another condition, rather than the original impairment itself.

What the DDA prohibits: direct discrimination and disability-related discrimination

The DDA features aspects that are unique in UK anti-discrimination law. Alongside the prohibition of discrimination, it establishes a duty on employers (and service providers) to make "reasonable adjustments" to accommodate disabled people. A high proportion of workplace issues have arisen from the interpretation of this duty. The next sub-section looks at this in more detail. This section considers direct discrimination and the less clear concept of disability-related discrimination. Originally, the DDA allowed an employer to offer a justification for direct discrimination. This has been removed. Once direct discrimination has been established, there is now no defence.

Direct discrimination is defined as treatment that is less favourable than would be applied to someone who is not disabled, on the grounds of the person's disability. To prove it requires the existence of a comparator – someone to whom the particular disability does not apply (although it could be someone with a different disability), but who otherwise (as far as they are relevant to the employment) has similar characteristics (for example, skills, or qualifications). This can include, if necessary, a hypothetical comparator.

The DDA makes it unlawful for an employer to discriminate against a disabled person:

- in recruitment;
- in terms of employment;
- in opportunities for promotion, transfer, training or any other benefit;
- by dismissal or any other detriment; and
- by discrimination after the employment has ended.

Discrimination that is unlawful explicitly includes harassment and victimisation. Unions will be familiar with these concepts from other anti-discrimination law. Court cases had already confirmed that harassment on the grounds of disability was outlawed by the DDA, but that protection is now strengthened by its explicit inclusion.

Disability-related discrimination is a concept introduced into the DDA to cover situations where there is discrimination related to the disability of a person, but (unlike with direct discrimination) is not the disability itself. The code of practice explains the distinction through an example of someone who takes six months sick leave for a reason related to their disability. Their employer has a policy of dismissing anyone who takes this amount of sick leave. The comparator in this case would be someone who has not taken sick leave and is not dismissed.

The cause of the less favourable treatment of the first person is the amount of sick leave, which is related to the disability, but is not the disability itself, so it is not direct discrimination. Under the DDA, the employer would still be acting unlawfully unless they could show justification. Unlike in the case of direct discrimination, it is possible for the employer to argue that their action is justified.
Reasonable adjustments

What is a reasonable adjustment and what is "reasonable"?

The DDA states that the duty to make reasonable adjustments arises "where a provision, criterion or practice applied by or on behalf of an employer, or any physical feature of premises occupied by the employer, places a disabled person at a substantial disadvantage compared with people who are not disabled".

If a disabled person is at a "substantial disadvantage", the employer has to take appropriate steps to make the relevant adjustment. Failure to do so is unlawful and cannot be justified.

In practice, this means that the scope for argument has moved to the question of whether the adjustment proposed is reasonable in itself. One consideration is whether what is proposed will actually be effective: will it succeed in making it possible for the disabled worker to do the job? On this issue, as the case of Rothwell v Pelikan illustrated, the law has confirmed that it is still necessary for the employer to investigate the provision of an adjustment, even if this proves in the end not to be effective.

A second question relates to the cost to the employer. On this, as the case of Murphy v. Slough (page 11) shows, there may be an argument over who is actually the employer when it comes to deciding who has to bear the cost of an adjustment. While a large majority of adjustments cost very little – if anything – and while it may be possible for the employer to obtain financial help from the Access to Work scheme, there may still be circumstances where an adjustment is too costly and where the courts rule that adjustments are unreasonable.

DDA duties apply at all stages of employment, including recruitment. This means that a disabled applicant can expect reasonable adjustments to be made to enable them to compete for a vacancy. However, in these circumstances, the employer has to know about the adjustments required before they can be held liable for a failure to provide them.

What the law and the code say

The DDA spells out a number of types of adjustment that would fit the definition of reasonable. These are:

- making adjustments to premises;
- allocating some of the disabled person's duties to another person;
- transferring the person to fill an existing vacancy (see the Archibald case, page

10);
- altering the person's hours of work or training;
- assigning the person to a different place of work or training;
- allowing the person to be absent during working or training hours for rehabilitation, assessment or treatment;
- giving, or arranging for, training or mentoring (this may be for the disabled person, or other persons. See Simpson v. West Lothian, page 10);
- acquiring or modifying equipment;
- modifying instructions or reference manuals;
- modifying procedures for testing or assessment;
- providing a reader or interpreter;
- providing supervision or other support; or
- any combination of adjustments as required.

In addition to these steps, the Code of Practice adds several further possible adjustments, including:

- permitting flexible working;
- allowing a period of disability leave;
- participating in supported employment schemes such as Workstep;
- employing a support worker to assist the disabled employee;
- modifying grievance or disciplinary procedures;
- adjusting redundancy selection criteria; and
- modifying performance-related pay arrangements.

See Part 3 of this booklet for more detailed advice.

Union representatives will understand that the key to negotiating appropriate adjustments with the employer will be to discuss and plan what adjustments are required with the disabled person, to ensure prompt action by the employer to implement them and to ensure that any transitional stages are properly negotiated and agreed by all parties concerned.

It may be useful to tell the employer about the Government's Access to Work scheme (see page 23), which may fund the necessary adjustments. At no point is the disabled person responsible for meeting the costs of adjustments: this duty falls on the employer.

The interpretation of the courts

A large part of DDA case law has arisen from the question of what constitutes a "reasonable adjustment". Some case law is instructive and can be used as guidance in negotiation as to what is, and what is not, reasonable for an employer to do. It is essential to remember, however, that each situation is unique and the outcome of any legal challenge will be determined on the facts of the particular situation.The following cases are still helpful.

More favourable treatment allowed

Archibald v Fife Council (2004) was concluded by a House of Lords decision. The claimant had worked as a road sweeper, but had become incapable of doing her original work. She was, however, capable of doing a sedentary job. These jobs were all at a higher grade and the employer refused to transfer her without going through a competitive interview. This process led to someone else being appointed and eventually she was dismissed. The ruling stated that a transfer to a suitable alternative post, even though at a higher grade and to an entirely different type of work, was a reasonable adjustment. It also confirmed that the DDA permits employers to treat a disabled person more favourably if that is required to fulfil their obligation under the DDA.

Creating a new post
In the case of Southampton City College v Randall (2005), the EAT ruled that a reasonable adjustment could include the creation of a new post in a situation where it was undertaking a major reorganisation. In this case, the employer had failed to consider such a step in dealing with a teacher who had lost his voice.

Adjustments may apply to colleagues
The EAT (Scotland) decided in the case of E M Simpson v West Lothian Council (2004), a case backed by UNISON, that it was reasonable for the employer to be required to consider offering deaf awareness training to colleagues of a deaf worker as a reasonable adjustment. The judgement made it clear that while other staff could not be compelled to undertake such training, it was within the scope of the reasonable adjustment provision of the DDA that the employer should make it available. This ruling is significant because it makes clear that adjustments may not apply just to disabled people but to their colleagues too.

Support after job offer essential
In the case of Williams v J Walter Thompson Group Ltd (2005), the Court of Appeal supported the claim of Ms Williams, a blind worker appointed as a computer software operator, whose employer, although aware of her being blind when offering her the post, did nothing to make any reasonable adjustments to accommodate her, leading to her resignation.

Sick pay arrangements
Nottinghamshire County Council v Meikle (2004) determined that contractual sick pay arrangements can be subject to the reasonable adjustment duty in some circumstances. See Section 3 on the issue of sickness absence and related issues.

Training courses must be accessible
In Smith v Churchill Stairlifts (2005) the Court of Appeal also clarified that reasonable adjustment duties apply to training courses leading to employment. In this case, the applicant had been rejected because the employer required the trainees to carry full-size radiator cabinets, something that he had been unable to do as a result of a physical impairment.

Employee consultation vital
The case of Rothwell v Pelikan Hardcopy Scotland Ltd (2005) saw the EAT (Scotland)

rule that decisions to end the employment of a worker with Parkinson's disease, that were taken without the employee's consultation and without seeing a more favourable consultant's report commissioned by their own occupational health doctor, were unlawful. The most important point made in this and other cases is the necessity of there being consultation with the worker concerned on future plans for their employment. This applies even if, ultimately, the suggested adjustment is found not to work.

Whose resources are taken into account?
The case of Murphy v Slough Borough Council (2005) however, was less favourable. In this instance, the Court of Appeal ruled that when deciding whether it was reasonable to allow the claimant paid disability leave, it was only the resources of her direct employer, her school, rather than those of the Local Education Authority, that could be taken into account. In this case, it concluded that the employer's refusal was reasonable because of its limited resources.

This case law gives some indication of the scope of the reasonable adjustment duty, along with the importance of proper consultation.

The DDA and occupational pensions

As a result of regulations that came into force in October 2004, the DDA covers occupational pension schemes and group insurance schemes as part of its general prohibition on discrimination against disabled people over employee benefits. The law covers both employers directly and the trustees and managers of an established scheme, in relation to service and to rights accrued since 1 October 2004.

The regulations mean it may be unlawful for a pension scheme to refuse membership or to offer less favourable terms of membership to a disabled person, in the circumstance, for example, where an applicant to join was known to have an impairment that might lead to them taking early retirement.

The duty of reasonable adjustment also applies to the way in which pension schemes operate. The Code of Practice gives an example of a long-serving member of a final salary scheme, who as a result of a disability has to reduce her working hours (and pay) for the final period of service. In this situation, it argues, it would be a reasonable adjustment for the scheme to average out her salary over a number of years before the retirement date, rather than base the pension on the part-time service immediately prior to that date.

The duty also covers the way in which information is provided – communications may need to be made in Braille, on tape, or through interpreters at a meeting.

Where the scheme rules are in conflict with the DDA, the DDA wins, and scheme rules may need to be amended.

There are more complicated procedures for a complainant to go through in the event of a problem with the pension scheme, and union representatives are urged to acquaint

themselves with expert advice, starting with the information in the Code of Practice. Where the employer provides group insurance for employees, this is also covered by the DDA.

But where a complaint concerns the providers of the insurance, this falls under service provision (DDA part III) rather than employment provisions (DDA part II). Again, it is recommended that the detailed information in the Code of Practice is consulted.

Public sector duty

The DDA 2005 made a further and significant improvement to existing law by creating a positive duty on all public sector bodies to promote disability equality and to eliminate discrimination.

It establishes both a general duty and also specific duties for most public bodies, requiring them to produce disability equality schemes that lay down what they intend to do in order to achieve the duty, explain how they have involved disabled people in preparing the scheme, and how the scheme will be measured and monitored. It comes into force in December 2006.

The duty means that public bodies will be required to change their approach. Rather than the current legal requirement – based on responding to obligations – they will instead have to review, pro-actively, their whole approach.

The trade union movement has welcomed this and the TUC has published advice to unions that goes into detail on how this opportunity can be maximised. The TUC advice is available from www.tuc.org.uk or from TUC Publications (see Contacts, page 38).

The DDA applies to trade unions

Trade unions (considered by the law as “trade associations”) also have important legal duties to their disabled members. These are spelt out in the DDA and are fully described in a specific DDA Code of Practice for Trade Organisations and Qualifying Bodies.
Duties for unions mirror those for employers and service providers. They make it unlawful to discriminate against both employees and prospective employees and members or prospective members on the grounds of disability. The whole range of union services must be provided without discrimination, including:

- access to training, conferences and other events;
- providing union publications in whatever format a member requires;
- the same level of representation as is provided to non-disabled members;
- access to the same benefits as are provided to non-disabled members (e.g. discounted holidays, finance deals);
- the same access to union meetings as non-disabled members;
- the same ability to participate in (for example) union elections (which may require adjustments to the election process, e.g. for visually impaired members).

Practically, this means unions will have to make reasonable adjustments to enable disabled members to participate to the extent that they wish in the operations of the union. Such adjustments are likely to include ensuring meetings only take place in accessible venues, providing parking spaces and accessible toilet facilities, the provision of sign language interpreters and documents in a variety of formats.

Training for officers and staff is essential if the union is to avoid breaching the law through ignorance – remember that a union is legally responsible for anyone acting in its name, including lay representatives. Many unions already have structures in place for disabled members. These bodies are a crucial resource to make sure the union gets it right.

Future legal changes

Disability discrimination law in the UK now has the most comprehensive reach ever, but this may not be the final word. Consultations are taking place on the shape and content of a future single equality law that is intended to bring together the numerous different current strands of anti-discrimination law into a single statute. This is planned to be completed during 2007.

The DDA has always been distinct from other equality legislation and this distinctiveness is likely to change when proposals for the new single act appear.

During 2006, the Disability Rights Commission began consulting over what definition of disability should feature as the basis of the DDA. It has suggested a fundamental change away from the “medical model” (see page 26) that underlies the present DDA, to a “social model” approach that focuses on barriers to disabled people, rather than on the individual’s impairments. If this new approach is adopted, it may have a significant affect on how disability is treated in the new, single act.

Part 3
Disabled people at work

Understanding a worker's legal rights can be a powerful tool for encouraging employers to carry out their duties, but few will want to go through the stressful experience of taking their employer to an employment tribunal if there is another way to solve the problem. The DDA is also very complicated and surveys have confirmed that there is widespread ignorance about what it says.

An informed union representative may find it easier to negotiate suitable adjustments for a member if they can cite the DDA or invite the employer to check their obligations for themselves by seeking advice from the Disability Rights Commission (DRC) or bodies such as the Employers Forum on Disability. But in many cases, being able to work out a solution by discussion, in which the involvement of the disabled member is essential, is more likely to lead to a positive outcome.

It may also serve as a way to persuade the employer to review their policies and procedures, with a view to making them more disability-friendly.

Union representatives may also need to explain to employers and fellow workers one of the fundamental principles behind the DDA that differentiates it from other anti-discrimination laws: which is that sometimes, in order to achieve equality of outcome, it will be necessary to treat a disabled person more favourably than a non-disabled colleague, in order to compensate for the barriers they face arising from their impairment.

This section looks more closely at some of the issues raised by unions and makes proposals for good practice in dealing with them.

An audit

A good way to begin improving an employer's practices on disability is to carry out an audit of current policy and practice. This could be combined with a general equalities audit in which the employer reviews everything for compliance with good practice (and the law), whether it be on grounds of gender, race, disability, age, sexual orientation or religion and belief.

Many employers will already have some kind of equal opportunities statement. If this does not include disability, an audit will provide the opportunity to press for it being added, along with the steps needed to put it into practice. If it does already include it, this is the opportunity to confirm that it has real meaning.

A significant element of an audit is to monitor the existing workforce in order to identify the number of disabled workers and their location within the organisation. Certainly, any public body considering its plans for carrying out its Disability Equality Scheme (see page 14) will need to carry out monitoring in order to measure progress. But both

employers and unions need to be aware that monitoring disability is not completely straightforward: there are several questions that need to be considered if a monitoring exercise is to produce meaningful results. Detailed advice on carrying out a disability monitoring exercise is given in Part 4.

POLICY AT WORK
Nottinghamshire County Council permits disabled employees to attend a monthly Disabled Workers' Group in work time. The group provides space to discuss issues and feed back to the employer.

The possible pitfalls of undertaking an audit were illustrated in a Warwick University survey, which found that two different surveys of the same private sector employer showed 2.1 and 6 per cent of the workforce declaring a disability. Disparities of this size could be down to a number of factors, but the figures help show why it is so important to involve disabled workers in audits and to undertake a thorough briefing of the workforce before embarking on a monitoring programme.

Disabled workers speaking for themselves

The most direct way for an employer to identify policies and practices that need their attention is to ask its disabled workers. Unions should encourage and assist in establishing forums where disabled workers can put forward their own experiences. Naturally, as with the monitoring exercise as well, people are only likely to take part if they are confident the end results will bring about action by the employer to rectify any problems identified. This means the employer needs to give a prior commitment to such action. Equally, employers must arrange consultation meetings during work hours so that participants do not have to sacrifice their own time and so they continue to be paid as usual.

Employment levels and recruitment policies

Before examining the kinds of issues disabled workers may face at work, it is necessary to consider how unions can contribute to encouraging greater employment levels of disabled people in the first place.

For public bodies, this will be an entirely appropriate part of the process of preparing for the introduction of the public duty (see page 12). In order to carry out their duty, public employers will need to review their advertising and recruitment procedures and consider the present make-up of their workforce in order to decide whether to prioritise a particular target group.

It may be difficult to obtain reliable statistics through monitoring or talking to departmental managers in larger organisations, but in the absence of concrete information, national statistics would suggest people with mental health issues, sensory impairments or learning difficulties, for example, are going to be under-represented. It may be appropriate for the union to remind the employer that the DDA permits employers to exercise positive action if they find that particular groups of disabled people are not seeking employment with them. Employers can ensure that advertising of vacancies is brought to the attention of particular sections of the community and that such material specifies the employer is keen to entertain

applications from that group.
Of course, before doing so, it is essential that the organisation has in place all the adjustments that may be needed to enable someone with a particular impairment both to go through the recruitment process and to take up work afterwards if their application is successful.

The same argument applies to private sector employers too, except that the disability equality duty will not apply to them. Here, it may be necessary to invoke the business case argument.

Two Ticks

Many employers have applied for and been granted use of the Two Ticks symbol designed to demonstrate their commitment to the employment of disabled people. This commitment involves promising an interview to all disabled applicants meeting the minimum job criteria, making necessary adjustments and supporting the disabled person once appointed, ensuring that their requirements are being fulfilled regularly.

The symbol was originally introduced pre-DDA in 1990 and its use is widespread. However, one criticism has always been that there is no monitoring of the employers displaying it to check that they are carrying out their commitments. There is also no means of removing it once granted. An employer already using the symbol should therefore be urged to review their practices, to make sure they do comply with their original commitments. There is much evidence that this does not happen. This only serves to discredit the scheme among disabled people.

The business case

For many years, the Government has encouraged employers to understand that employing disabled people is not a matter of taking on a burden, but that there are strong business reasons for doing so. Organisations such as the Employers Forum on Disability encourage employers to adopt this approach, and considerable successes have been registered with many large employers.

Unions may wish to adopt this argument to challenge outdated ideas held by the employer that are preventing them reviewing their employment practices or consciously welcoming disabled people into their organisations. Of course, some employers have welcomed disabled people on the grounds of equality and civil rights, as is the case with many organisations – in particular public sector ones, where this ethos is strongly established. But where this is not the case the business case can be presented, reminding employers that being positive about disability can have financial advantages too.

The key arguments of the business case are that:

- Disabled people are no less productive or reliable than non-disabled people.
- Disabled people often stay longer with the employer and have less time off sick; most do not require adjustments.
- Disabled people and their families constitute a significant potential market for an

organisation and employing them may help in targeting this audience.
- Having an effective diversity policy is good for staff morale and good for the reputation of the organisation.

Unions will need to judge the extent to which deploying these arguments will lead to a change in attitude, culture and policy with an employer. Evidence from some organisations that have won awards for their policies is that the effects are not felt evenly throughout the company, and that obstacles remain to transforming words into action.

The Warwick University survey found quite different responses from public and private sector organisations. In the former, the common feeling was that the business case was alien to the ethos that ought to prevail in the public sector, and that social justice arguments should – and largely did – prevail. In the private sector company, which won an award for its disability policies, senior managers supported the business case, but line managers, faced with the reality of the time and costs of obtaining occupational health reports, making adjustments and extra managerial time and resources, in a climate of cost-benefit analysis and pressure to achieve targets, remained sceptical. The conclusion of the study was that for the business case to be useful, it would have to be tied to a change in the culture and attitudes towards disability that prevail across the organisation.

If the business case argument is to be deployed with success, therefore, unions need to move beyond the rhetoric to point out the practical advantages of employing disabled people. They will also need to ensure that the employer seriously commits to cultural changes that extend throughout the organisation. Evidence strongly suggests that if a commitment to change only exists at the top of an organisation (critical though that undoubtedly is), it will not be sufficient to challenge existing attitudes and practices at lower levels of management. A key element of this is likely to be training.

Other workplace issues

Access to promotion and training

It has long been assumed, from empirical and anecdotal evidence, that disabled people once employed are more likely to be in low-paid work than non-disabled people, and less likely to be able to develop a career path through their organisation. The first of these assumptions is supported by the findings of the Office of National Statistics, but their figures may relate as much to the reality that disabled people, as a whole, obtain fewer qualifications than non-disabled people as a result of what happens to them in childhood and education.

The Warwick University survey confirmed that this continued to be true in the private sector organisation they surveyed, where disabled people were less likely to be promoted and were less represented in management grades than non-disabled people. There is also some evidence (both from this and other surveys) that things are already improving in the public sector.

Whatever the law says about the illegality of discrimination on grounds of disability,

and regardless of an organisation's stated disability policy, its prevailing culture can remain discriminatory. It is assumed that some disabled people are less able to develop a career, with deep-seated prejudices causing sometimes unquestioned beliefs among managers and colleagues. People may therefore find themselves discouraged from applying for promotion opportunities, or given to understand that there is no point applying, since they are bound to fail. Unions must challenge this assumption from the ground up. They need to press for an audit of the representation of disabled people in different grades and then for appropriate action if this reveals that disabled people are progressively less well represented the higher one goes. Such action is likely to include training: both for those responsible for making promotion decisions and for disabled employees, to encourage them to acquire the skills and the confidence to apply when opportunities arise. It will also require a lead from the top of the organisation, including firm backing from senior figures backed by a genuine commitment to change and action that may follow from the audit.

Performance-related pay and bonuses

In organisations where pay is related to productivity and where bonuses are paid on the same basis, then where a disabled person has an impairment that requires them to take more time off work, or to work more slowly than a non-disabled counterpart, they will lose out.

In these circumstances, unions may call on the law to persuade the employer that to apply the same yardsticks as are applied to non-disabled workers may amount to a failure to make a reasonable adjustment. The Code of Practice suggests a number of different possible scenarios where a disabled person's productivity has declined as a direct result of their impairment. The adjustment might be the provision of particular pieces of equipment to enable the worker to increase their output, or where there is a demonstrated direct link with the impairment, continuing to pay the disabled person their bonus – sometimes it is necessary to treat a disabled person more favourably in order to achieve equality of outcome.

Sickness and disability

One of the continuing difficulties faced by unions representing disabled workers has been the unclear distinction between sickness and disability.

Workers who have developed impairments that require them to take extended time off work are particularly vulnerable where the employer invokes their existing sickness absence procedure involving laid-down periods of full and half pay, capability meetings and ultimately dismissal, or alternatively pressure on the worker to take early or ill-health retirement.

For as long as this culture continues to dominate in many sectors of the economy, it is likely to be exceptionally difficult to increase the percentage of disabled people in employment, as each year numerous people who could return to work if their condition was understood and treated as disability rather than sickness, end up claiming benefits or drawing on their pension schemes before retirement age instead.

The Government has recognised the scale of this problem and the difficulty of enabling

someone forced out of work by illness or disability to return to work. They believe employers' attitudes are one of the main obstacles and the best place to start reversing the trend is by persuading employers of the value and importance of retaining workers who may temporarily be incapable of (full-time) service on the payroll.

There is DDA case-law that can be called upon to support a different approach by the employer, but only in some limited situations. The case of Meikle v Nottinghamshire County Council (2004) found that the duty of reasonable adjustment extended to a contractual sick pay policy where it could be argued that the reason for absence in the first place was the employer's failure to make an adjustment. Other similar cases suggest that this is the only ground on which a legal basis could be claimed for challenging the employer's enforcement of a contractual sick pay policy against a person absent because of their disability.

In another case where the result of the disabled person's repeated absences from work was dismissal (Dunsby v Royal Liverpool Children's NHS Trust, 2005), the EAT decided that the DDA did not prevent an employer dismissing someone for prolonged absence resulting from their impairment, providing they could justify the action.

As of Spring 2006, current employment tribunal cases have reached contradictory conclusions over the extent to which the duty to adjust can extend beyond a contractual sick pay period. The decision of a higher court may clarify this.

In the meantime, it would seem that the best protection that can be established to prevent disabled workers falling foul of policies based on periods of sickness is to negotiate new policies with the employer in which absence due to an impairment, or arising from sickness consequent upon an impairment, is counted separately from sickness absence altogether. This would enable the employer to consider making a reasonable adjustment that itself would be constituted of a period of paid absence, with a view to enabling the worker to return to their job after a period for rehabilitation.

Disability leave

Such a policy would be "disability leave" (sometimes alternatively called "rehabilitation leave"), an idea initiated by the RNIB, which the TUC has been campaigning for since the 1990s. As stated above, disability leave is listed in the Code of Practice as a reasonable adjustment, but is not on the face of the law. There is, therefore, no statutory right to insist it is put in place. However, the case for it is overwhelming, and an employer that genuinely wants to be seen as disability-friendly should be persuaded of its benefits. From the employer's perspective, chief among these would be that the person concerned is retained in employment and able to bring their accumulated experience and skills back to the organisation.

Such a policy would also encourage other workers to see their employer as progressive, encouraging loyalty and commitment. From the worker's viewpoint, being able to undertake a plan of rehabilitation in the knowledge that they can return to the security of their existing employment, while receiving pay in the interim, will lessen the stress that is

POLICY AT WORK

Salford Council allows up to six weeks fully-paid disability leave after a process of assessment and consultation.Unions in further education have agreed with the Association of Colleges guidance on disability

likely to accompany the period of absence and encourage a prompt return.

Main features of a disability leave policy should be:

- that it is an agreed period during which adjustments can be made both by the worker and by the employer;
- that it differs from sickness absence in that the absence is not the result of sickness, but is related to disability, and that it is for therapy, treatment, rehabilitation, or the planning and implementation of adjustments to the workplace or job;
- it may be taken in different ways – perhaps once a week for an appointment, perhaps blocks of time or perhaps as periods of part-time working, according to the plan agreed at the outset;
- the total length available will have to be negotiated with the employer, but this should be based on an understanding that each individual case is unique and the length of disability leave should be estimated and agreed in each individual case according to the requirements in that case, up to a maximum period determined by the agreement. Some parts of the Civil Service, for example, have agreed a maximum period of three months in any one year.

It will probably be necessary when negotiating a disability leave policy to agree who is eligible to apply for it and to decide that, as a default, it should be available to anyone who meets the DDA definition of disability.

Unfortunately, there are as yet only a few examples of agreed disability leave policies in operation. Some of these vary widely in their terms. UNISON has provided its negotiators with a model policy based on best practice and without a prescribed limit to the length of any given leave. Of course, it is this point that may prove most difficult for employers to agree.

Information on these will be made available as the TUC is made aware of them. Campaigning continues to secure statutory recognition of the policy as a reasonable adjustment.

The role of occupational health

The DDA case law concerning decisions made by medical specialists has been highlighted already. Unions have expressed concerns that in-house occupational health (OH) services are making recommendations that fit too easily with the employer's pre-judged conclusions about the fitness of a worker for continued employment. However, the decision made in Jones v Post Office (see page 6) confirmed that an employers decision on a worker's fitness only has to be "reasonable" in light of the evidence they have, which means there are few opportunities to challenge an employer's decision on an employee's employability once an OH report has
been made.

However, the Rothwell case (see page 11) also demonstrated that decisions on employment remain the responsibility of managers, not of medical experts, and where the medical evidence (as in this case) was not properly communicated, the liability for

this remained with the employer.

This may not be of much comfort in the majority of employment situations. The advice must be that from the outset, it will be vital for the union to ensure that there is medical advice that is appropriate to the impairment (that is, if necessary, from a specialist); and that if the employer will not or cannot organise this through OH, that external expert advice is commissioned. The second essential element will be, of course, that the disabled member is part of any process that involves considering what they can or cannot do. The DDA has clarified for certain that consultation with the disabled person is a requirement before any decision is reached, so there are strong grounds for pressing this to be done.

Health and safety (H&S)
It is sometimes alleged that there is a conflict between giving employment to disabled workers and health and safety in the workplace. Safety concerns have been used to deny work to disabled people on a range of grounds, such as saying that a wheelchair user could not escape from the building in an emergency or a deaf person would not hear an alarm.

In no case should it possible for an employer to argue that their obligations under the Health and Safety at Work (HSW) Act outweigh their obligations not to discriminate against, or make reasonable adjustments for, a disabled worker. The application of a blanket ban on anyone with a particular impairment (instead of, for example, conducting a specific risk assessment) is likely to amount to direct discrimination, which is incapable of justification. This may apply, for example, to policy decisions stipulating that anyone who is diabetic will be excluded automatically from a job involving driving, regardless of what type of diabetes is involved or how well balanced and controlled their condition may be. Such a policy, based on a generalised assumption about someone with diabetes, may be unlawful. (Different rules apply for type 1 and type 2. Representatives should check the detailed advice provided by Diabetes UK, available at www.diabetes.org.uk.)

Union representatives should take the approach that disability and safety work together, not in opposition, to create a safer and healthier workplace for all workers. In many cases, reasonable adjustments can be made that will eliminate or, as the law itself requires, minimise the risk.

- For workers with mobility impairments, the establishment of a simple “buddy” system where another person agrees to assist the disabled person in case of the need to evacuate the building may overcome the problem.
- In the case of someone with a hearing impairment, the provision of flashing lights as well as sound alarms would resolve the problem.
- Where workers are required to deal with hazardous substances, it may be necessary – and of benefit to everyone – to reconsider the limit level for the concentration in the air of the hazardous substance (as required by the Control of Substances Hazardous to Health regulations).

One issue that is frequently raised is that of workers lifting people, using the example

of disabled people in a care home environment where H&S concerns have led to the withdrawal of the service. This need not be the outcome, and the Health and Safety Executive guidance (HSG 225, Handling Home Care) should be used to resolve any problems.

Risk assessments should be carried out with respect to every individual concerned, as generic assessments may fail to identify particular risks. This approach is already contained within H&S law anyway, for example in the case of pregnant women, and should be extended as good practice for disabled workers.

To fail to do so is also to court a finding of a breach of the DDA: the Code of Practice advises that an employer who treats a disabled person less favourably (for example, by refusing to employ them in a particular capacity or by dismissing them after they develop an impairment), without having carried out a suitable risk assessment fitted to the individual, is unlikely to be able to show that its health and safety concerns justify the treatment.

One further point an employer needs to be aware of is that a request for an individual to undergo a risk assessment must itself be reasonable: it must be consistent with the specific task(s) required of the job, and not result from irrelevant considerations that may be based on preconceptions about a person's impairment. Failure to follow this principle may also lay the employer open to charges of disability discrimination.

As has been stressed already, the views of the disabled employee on any perceived H&S problems may lead to the identification of the most straightforward solution.

Redundancy and redeployment

In redundancy situations, unions need to take particular care to ensure that disabled workers are not targeted or pressured into volunteering ahead of other non-disabled colleagues or are not unfairly selected for compulsory redundancy. To do so may well be unlawful, as suggested in the case of Wheeler v Sungard Sherwood Systems Group Ltd (2004). In this case, the EAT decided that the employer had been guilty of disability discrimination in selecting the individual for redundancy based on his poor performance as a sales representative, which was a result of medication taken for depression.

Evidence from the Warwick University study of the treatment of disabled workers who found themselves placed in a redeployment pool varied significantly between the public and the private sector organisations. In the first, there was a central pool, and the chief concern was that efforts to match disabled individuals from the pool with potential vacancies were too much based on a paper comparison, leading to some inappropriate placements. To reduce the risk of this, the basic principle that the individual disabled person should play an active part in the process should be promoted.

In the private sector company, however, a different perception prevailed. Disabled workers' suspicions that they were more likely to be placed in the pool in the first place were confirmed by the statistics and although the redeployment system itself

was fair on paper, the reality was that disabled redeployees were not being treated fairly by managers recruiting to vacancies. This took place despite the organisation having the Two Ticks symbol.

In such cases, the first requirement for unions will be to identify the source of the problem and then to negotiate with the employer to challenge the culture that leads to such behaviour. If senior management is genuine in its commitment to employing disabled people, and serious in respecting the undertaking it makes when applying for the Two Ticks symbol, then it falls to them to ensure that managers further down the line understand what is required of them, and, more importantly, that company practices are made consistent with applying the standards involved.

Access to Work

The availability of financial support for making adjustments under the Government's Access to Work (ATW) scheme has been called one of the best secrets in government by the British Chamber of Commerce. Up to three quarters of employers were unaware of it when asked.

Wherever an issue arises over the potential cost of making the adjustment required for the employment or continued employment of a disabled person, unions should point out to employers the possible availability of ATW funding that can offset some or all of the costs to them. ATW is contacted via the Disability Employment Adviser at local job centres who passes the matter on to an ATW adviser who will discuss with the employer and the disabled person how to move forward. These advisers are based in business centres set up for the purpose in recent years.

ATW can be a generous provider. For those starting work, the support includes 100 per cent of the cost, including support workers (interpreters, readers, coaches for people with learning difficulties), travel to work for those unable to use public transport, and communicator support at interview. ATW may fund equipment or adaptations to premises. If already employed for at least six weeks, the employer is liable for the first £300 plus a minimum of 20 per cent of costs up to £10,000. ATW pays 100 per cent of costs beyond that figure. Funding is given for a maximum of three years, after which it is reviewed by ATW.

Unions have identified particular problems that have reduced the effectiveness of the ATW scheme in practice, while a thorough review carried out by the RNIB in 2004 confirmed existing weaknesses that threaten to undermine the great potential of the scheme to contribute to the Government's objective of improving the employment rate for disabled people.

The chief problems that may hinder or prevent a straightforward use of the opportunity provided by ATW are:

- limited eligibility, linked to limited funding;
- bureaucratic delays in carrying out agreed funding; and
- uncertainty and lack of flexibility on elements of continuing support.

Eligibility is partly determined by priority, and top priority goes to someone not yet in

work (or self-employment). But a major constraint on priority is budget. There are substantial regional variations in the application of eligibility criteria.

There is no right to obtain funding, which is discretionary, and there is no appeal against a refusal to provide funding. This means that where an employer thinks it can only afford to make adjustments if it receives ATW funding, the risk of an adverse decision – leading to the required adjustment not being made – is considerable. If this happens, the worker will have to decide whether they wish to challenge the employer's decision at an employment tribunal. They will need to carefully consider all the factors involved before deciding their prospect of success at a tribunal, at which the employer would defend their decision on resource grounds.

Even if successful in the application for ATW support, the union representative will need to be conscious of the problems that may arise if there are significant delays in the employer receiving the funds or in the provision of agreed equipment or support. Clearly, if particular equipment has been identified as necessary for a disabled worker to carry out their work, delays in provision will prevent the individual doing their job. There are cases where individuals have been offered jobs subject to ATW funding, but where the delay in processing the application have been so great that the offer has been withdrawn.

The third area where there have been problems relates to what happens after the initial funding has been put in place. Questions such as who owns the equipment provided become relevant if the individual changes their job. Similarly, changes to the level of support offered after periodic reviews of each individual package can place someone in a difficult situation, especially if the employer is reluctant to pick up the cost.

A good awareness of potential pitfalls is therefore vital for union representatives if they are to negotiate adjustments for a disabled member where the employer has requested, or agreed to request, financial support from ATW.

Prior agreement on the timetable for implementation may be essential, in particular, an agreement on how to proceed in the event of delays in obtaining equipment and/or funding needed to do the job. The employer may need to purchase the equipment and obtain a refund later from ATW, but obviously will be reluctant to do so unless they know the funding will be forthcoming. Prior agreement should be reached on future developments, such as what happens if the funding is reduced or ended on review, who owns the equipment and if the worker can take it with them when changing job (either within the same organisation or to a new employer). If agreement cannot be reached in detail, it would at least be sensible to agree a timetable for discussion so that changes to the funding do not have unintended consequences.

Training

The most difficult problem with ending discrimination against disabled people in the workplace is ignorance of the legal duties placed on employers and a discriminatory culture based on prejudices and lack of understanding of disabled people. The Warwick University study confirms reports made by unions that problems are

frequently found at line-management level. These managers, often faced with numerous competing demands and priorities – especially in private sector organisations – fail to challenge their own prejudices about disability.

An essential part of the union's negotiating agenda must therefore be the provision of training for managers at all levels. The lead must come from the top of an organisation to let staff know why such training is required, what its purpose is and how it will be followed up through review.

More difficult will be arguing that in order to make what is learnt from such training have an impact in real life, the general culture of the whole organisation may need to change.
In advancing such arguments, it will be helpful to insist in the case of public sector bodies on the necessity of managers understanding what is required of them under the imminent disability equality duty to which they will all be liable from December 2006. In the case of private sector employers, this argument cannot be presented, but there is sufficient DDA case law to illustrate the risk to the employer of a manager getting it wrong, and therefore the importance of effective training if only for the negative reason of avoiding expensive tribunal claims.

Having decided to train on disability, there arises the question of what kind of training to recommend. The TUC recommends that wherever possible, preference should be given to what is called Disability Equality Training. This is distinguished from the more common Disability Awareness Training by focusing on challenging the underlying conceptions behind the discrimination faced by disabled people, and is therefore best suited to challenging the culture that underpins discriminatory treatment. It is always delivered by disabled people themselves.

When progress is reviewed (see page 28), the take-up and effectiveness of training should be included, and revised, according to the findings.

'Disability champions': training for union representatives
Unions will also wish to encourage a greater awareness among their own representatives of the issues faced by disabled members in the workplace. Since 2004, a training scheme initiated by Amicus has been open to all TUC-affiliated unions for the training of workplace disability champions.

This fully accredited scheme is delivered from approved TUC training centres and provides participants with a thorough understanding of the issues highlighted in this booklet, within a social model of disability. It offers a practical plan designed to assist workplace representatives negotiate reasonable adjustments, carry out access audits, and generally encourage understanding of disability issues within an organisation. From 2006, it will additionally provide training on the Disability Equality Duty and an online version of the training course. The scheme's website is www.disabilitychampions.com.

Part 4
Audit and monitoring

The Disability Discrimination Act 2005 creates a duty on public authorities to promote disability equality, including a requirement to monitor their policy. Alongside this new legal obligation, many organisations have started to add disability monitoring to their existing gender and race monitoring.

However, there are important differences between disability and other kinds of monitoring. It is a sensitive issue that is difficult to get right: unless disabled workers are convinced employers are carrying out the monitoring in order to achieve outcomes that will be of benefit to them, response rates will be low and the exercise fruitless.

The TUC recommends that disability monitoring should be:

- based on an understanding of the “social model” of disability, rather than the traditional “medical model”;
- integrated into a worked-out disability equality plan;
- preceded by consultation, briefing and training to encourage maximum participation;
- based on asking the most useful questions, determined by a clear grasp of how the data will be used;
- as far as possible, and having regard to data protection law, be anonymous and confidential.

Social and medical models

Several times in this booklet, reference has been made to the social model of disability, in contrast to the medical model approach adopted by the law. This is not an abstract or theoretical exercise: the decision on which approach to adopt matters a lot.

The social model begins with the understanding that disabled people face exclusion and discrimination because barriers are placed in the way of their full participation in society. With this approach, “disability” is the result of the way these barriers interact with people’s impairments. It holds that it is not someone’s impairment(s) that exclude them from participation in society – instead, barriers are either physical (like stairs) or as a result of attitudes and prejudices: the idea that because someone has an impairment they cannot possibly achieve as much as someone who doesn’t.

Achieving equality under the social model then, will require adjustments to working practices and physical features as well as a more profound transformation of attitudes: abandoning traditional views based on what a disabled person can’t do, to one centred on what they can.

The medical model begins with someone’s impairment(s) – what is “wrong” with them – and what can be done to assist the individual to “cope” with their condition. It operates in a framework that traditionally leads to dependency for the disabled person

on the charity of others, rather than the approach of removing the barriers to enable them to participate equally in society.

Using the social model should lead to an equality plan that aims to remove barriers (both physical and attitudinal). Any monitoring that follows should then be designed to measure progress with that plan. It would not ask disabled people what is “wrong” with them (as many existing monitoring schemes do). The only exception to this would be if it was trying to establish if there were particular groups of disabled people who were not employed at all, with a view to planning to improve that position.

The new DDA duties and their consequences

One consequence of the medical model approach of the DDA 1995 is that many people who are disabled by barriers in some way do not count as disabled under the DDA, and therefore cannot claim its protection. Another is that 52 per cent of people who do count as disabled under the DDA do not recognise that they are disabled, as research by the Disability Rights Commission has shown, and will therefore often reply to a monitoring questionnaire that they are not disabled. This creates an initial problem with any monitoring scheme, of deciding what definition of disability to use.

The new duties on public bodies to promote disability equality will cover both the services the body provides, and its role as an employer. As the Code of Practice accompanying the new law makes clear, monitoring is a critical tool for the organisation to measure and evaluate progress. Public bodies subject to the general duty to promote disability equality will be required to report on their progress, and this duty will also fall within the scope of any inspection or audit process to which they are already liable. Without monitoring, it would be very difficult for public bodies to identify how far they were meeting their obligations. Many organisations, therefore, will review how they monitor their workforce.

A role for trade unions

The role of unions in working with employers to achieve the best outcomes can be vital, including the setting up of an effective monitoring scheme. Although the new duty is restricted specifically to public bodies, the same principles apply equally to all sectors, and the development of effective policies by public bodies can be a lever for promoting good practice everywhere. Unions certainly should build on the example of policies developed in the public sector to encourage other employers to take similar steps.

Preparing for monitoring

Before deciding how to monitor disability, an organisation should agree on why it wants to do so and then decide what to measure.

Preparing the ground: why monitor?

Collecting the information has no point unless something useful will be done with the results. Being clear about what the data will be used for and demonstrating that the

organisation is committed to disability equality are critical first steps. Without first securing this commitment, a monitoring exercise will not work. Public authorities will be under a legal obligation to monitor. But they may need to be encouraged to make full use of this requirement, and to go beyond mere compliance with the law.

Resistance to monitoring

There is, as explained above, a serious problem in that the legal definition of disability does not match up with a lot of people's own perception of whether they are "disabled". Many impairments covered by law (for example, diabetes, dyslexia and mental health conditions) are "invisible" – you cannot generally see them. Additionally, many people who are legally "disabled" will have lived their lives without thinking of themselves in this way. Many will also consider that their impairment is deeply personal and will see no reason why their employer should know about it.

Others will know from experience that to reveal their impairment – especially where it involves something like mental health – is to invite discrimination. These people will therefore be understandably reluctant about answering questions on disability. That is also why it is so important that monitoring is confidential.

For all of these reasons, unless disabled people are convinced that the employer's purpose in collecting data about disability is to improve the position of disabled people within the organisation, many will choose not to answer such a question. Low response rates can invalidate the entire exercise from the start. That alone is a powerful reason for employers to prepare thoroughly before auditing.

An overall plan

A monitoring exercise will only work if it is part of a properly considered plan to promote greater disability equality. This plan then needs to be extensively promoted and explained to the whole workforce. The aim needs to be to convince the workforce that monitoring is being done as part of a plan to improve the position of disabled people, otherwise it is unlikely many disabled people will answer the question, even if they do answer other monitoring questions (for example, on race and gender). The plan, therefore, will need to spell out the kind of changes that are envisaged after monitoring.

Some of the questions likely to be common across organisations might be:

- Do we employ a proportionate number of disabled people compared to non-disabled people?
- Are there particular groups of disabled people who are under-represented in the workforce?
- Once employed, how are disabled people being treated inside the organisation?
- How have things changed since the last survey?

To know the answers to these questions is not enough. The plan also needs to answer the question: what is the organisation going to do with the figures? Specific objectives would need to be set, with a timetable for action, and review. Future monitoring would measure progress with the plan. The DRC's advice to public bodies (the Code of Practice) spells this out in detail.

Consultation
The experts on disability are disabled people themselves. This basic principle is often ignored and there is still a tendency to talk to those claiming to speak on behalf of disabled people, rather than to disabled people themselves. The reality is that prior consultation with disabled workers and/or disabled service users will have enormous benefits for an organisation if it will help the organisation:

- identify the kind of issues that it needs to address in an equality plan. Being able to focus in on specific areas makes it more likely that real changes can be planned for;
- consider the kind of solutions it might need to put in place to deal with the problems;
- grasp what kind of questions are, or are not, acceptable in any monitoring questionnaire;
- convince its workers and/or service users that it is seriously committed to the promotion of disability equality, and therefore encourage people to participate more fully in any monitoring exercise.

Unions have a natural interest in being involved in the consultation processes. In many cases, the employer may not know how to consult with disabled workers. Working together with the union can assist in reaching out, and might encourage the development of forums for disabled workers where none existed previously.

Briefing
Following the initial consultation, it is recommended that briefings are provided to all staff. At these briefings, the purpose of the equality plan can be explained and the reasons for the monitoring presented. Questions can be raised and answered, and issues not previously considered might arise that need incorporating into the plan. The greater the level of involvement in the preparation of the plan and monitoring, the greater the likelihood of high levels of participation.

Leadership and training
The visible support of the whole organisation for the disability equality plan and for the monitoring exercise will go a long way to convincing people that the employer is serious about their stated objectives. Considering ways in which senior figures will demonstrate their commitment to, and involvement in, the equality plan and the monitoring project, may be useful: for example, by ensuring that senior management and (where appropriate) the board are included in the monitoring. It might encourage managers to treat the whole matter as important and workers to understand that the intention is to bring about genuine improvements in the employment and treatment of disabled staff and/or service users.

In many organisations, evidence suggests that strong support from workers and good intentions from the top can be undermined at the level of line management. It is strongly recommended that employers are encouraged to organise training in disability equality (see page 25).

The TUC recommends thorough preparation for monitoring as part of a disability

equality plan including consultation with disabled people, briefings for managers and staff, and training in disability equality.

Planning the monitoring: what to measure

Having consulted widely and explained to workers and managers what the organisation plans to do to promote disability equality and how monitoring fits into the broader equality plan, it is necessary to answer some key questions about the monitoring exercise itself. The issues to be addressed by the equality plan may include:

- counting disabled workers;
- checking recruitment;
- identifying barriers;
- measuring discrimination.

TUC advice is that different forms of monitoring may be appropriate for answering different questions, and that a "one size fits all" approach may not be the most effective in obtaining a good response rate or in obtaining the data needed. Identifying what needs to be measured should determine what information is collected and what questions to ask. If the organisation wants to deal with all questions simultaneously and can only undertake a single monitoring exercise, particular care will need to be taken to devise the right questions. However, rather than assuming that monitoring the whole staff group with questions about disability is the only method available, it is recommended that the possibility of using various other forms of survey is explored.

Counting disabled workers

The first thing an organisation may wish to address is the number of disabled people working for it. Having a figure for this tells the organisation whether it is recruiting a proportionate number of disabled workers and whether it is retaining them in employment. It can be asked as part of the recruitment process or as part of a survey of existing workers. If the results show the number to be disproportionately low, it should lead to planning more targeted recruitment and changes to the recruitment process. It might also call for a review of internal procedures and provide a benchmark against which progress can be measured during future monitoring.

For this initial monitoring, the only question that needs to be asked is: "Do you consider yourself to be disabled?", with a "yes" or "no" answer. It is advised the question is accompanied with a

Recommendation

Disability monitoring should be both confidential – with clearly defined controls on access to the data – and anonymous, so no-one can be individually identified from their response to the questions.

An organisation can legally publish information that is only in statistical form. Alongside the recommended advance planning and a clear statement by the organisation of its commitment to disability equality, anonymity is also the best guarantee of a high response rate.

The fear of disclosure will lead many disabled people, and especially those with "invisible impairments", not to respond. However, there are some questions where anonymity will not be possible and particular steps will be needed to encourage a useful

statement about why the information is needed, a definition of “disabled” (see page 35), as well as a commitment to confidentiality.

In the past, many organisations that monitored disability did not have this approach, but instead asked workers to identify themselves against a list of impairments. The TUC believes this is the wrong approach. Many people refuse to answer such questions in the first place. Secondly, to know that people have certain impairments does not, in itself, help the organisation know what further action should be undertaken. To obtain that information calls instead for a question about barriers (see page 32).

Checking recruitment

The same principles apply when it comes to reviewing the organisation’s recruitment procedures. Here, employers need to ask: “Are disabled applicants being treated equally at the recruitment stage?” To measure the proportion of applicants at each stage of the process, the straightforward: “Do you consider yourself to be disabled? Yes/no” question is sufficient.

It will be particularly important at this point to stress the reasons for asking the question, pointing out that the employer is committed to disability equality and will use the information to check that disabled applicants are getting equal treatment.

It will be possible for the survey to be kept anonymous by including the question in a separate form (probably along with other equal opportunities monitoring questions) that will be separated from the application itself, not be individually identifiable, and used only for statistical analysis.

Adjustments for interview: an exception to anonymity

Where the employer decides to ask whether the applicant requires any particular adjustments to be made for interview, clearly this cannot be anonymous.

It will instead be necessary for the form to state the employer’s commitment to ensuring that disabled applicants are treated fairly in the recruitment process and their commitment to making any reasonable provision needed for the applicant to be able to take part in the interview.

If the employer is already part of the Government’s Two Ticks scheme, they will also want to add their commitment to interview all disabled candidates for the post who meet the minimum criteria.

Recommendation

The only question recommended for the great majority of surveys will be “Do you consider yourself to be disabled?” with a “yes” or “no” answer

Counting by type

There are some limited circumstances in which it may be necessary to ask people to go beyond answering the initial “yes/no” question to further indicate what type of impairment they have. The only circumstance in which it might be necessary or useful

to ask this is where the organisation already has good disability policies in place and now wishes to establish whether there are particular groups of disabled people who are
under-represented in the workforce or amongst service users, with the intention of rectifying this. Unless the organisation is clear about what it is going to do with the results, the question should not be asked.

It is well known that some groups of disabled people are heavily under-represented in the workforce generally, for example, people with mental health issues, people with visual impairments and people with learning difficulties. An employer may wish to confirm whether their own workforce repeats this national trend in order to undertake a targeted recruitment process.

There are several problems in carrying out this kind of survey, the biggest being deciding on the division into categories. It may be best to use a list that reflects the categories used by the DDA, such as:

- mobility;
- visual impairment;
- hearing impairment;
- mental health; and
- learning difficulties.

It is worth bearing in mind that many people may be offended by the question and refuse to respond, seeing it as a reversion to medical model terminology. Some may not fit easily into any of the categories chosen and others may refuse to respond for fear that by doing so they may reveal private information that they have previously kept from others.

Recommendation

An organisation wishing to know about impairment groups among its workforce needs to be:

- entirely clear about what it is going to do with the findings; and
- conscious of the pitfalls associated with this type of question.

Furthermore, a survey that produces very low numbers for people with (for example) mental health issues may not in fact show that this group is under-represented, but may instead reflect the fact that no-one is willing to tick the box – revealing instead a deeper problem of the culture within the organisation (and society at large) in which people fear to risk being identified.

Some organisations approach this problem by inviting those who responded “yes” to the first question about being disabled to then state the nature of their impairment. TUC advice is that this is not often helpful, as the wide range of replies that may be received may defy statistical analysis and therefore lead to no useful outcome.

Identifying barriers

The fundamental duty on employers under the DDA to make “reasonable adjustments” for disabled workers has been strengthened with the creation of positive duties on public bodies to promote disability equality. Whether under the existing or new legal

duty, an employer wanting to make their organisation disability-friendly will need to know about the barriers facing individual workers and, more generally, about the changes that need to be made to remove the barriers. Employers therefore have the option of asking workers about the barriers they face.

Can using the monitoring exercise provide this information? Care is needed if the survey form is – as recommended – both confidential and anonymous. Anonymity will not sit easily with questions in which individuals are asked to spell out the barriers they face, as in many cases this is likely to identify them. Therefore, it may be best to have a separate survey, or perhaps to have a separate sheet with the monitoring form on which respondents can describe and locate the barriers concerned. This form would be returned separately. Alternatively, it might be decided to use a different method altogether, such as providing details of named individuals within the organisation who can be approached in confidence about barriers and who will be in a position to act on the information given to them.

Recommendation

It is more useful to have a separate process enabling individuals to report barriers, and this needs to be accompanied with a commitment to act on the results.

Inside the organisation

It may be the case that disabled workers have obtained employment without any discrimination problems during recruitment, while many will have developed impairments during their employment, either as a result of a work-related or other accident, or simply through the close correlation between impairment and ageing. But once employed in the organisation, it may be that prejudiced attitudes or long-standing institutional practices are

- preventing career development for disabled workers;
- blocking access to training opportunities;
- leading to different treatment from non-disabled workers during appraisals; or
- leading to disciplinary procedures being unfairly used against disabled people, for example, capability procedures being applied unfairly.

A serious commitment to disability equality will require management to identify if any of these practices exist, and to move to ensure that they do not continue.

Monitoring those taking part using internal procedures can provide an answer. Again, as with the statistical survey, it will normally be sufficient to ask “Do you consider yourself to be disabled? Yes/no”. On the basis of the responses, it should be possible to look at the organisation’s overall procedures and spot discrepancies. But since in many cases it will not be practical to carry out this kind of monitoring anonymously, a different method will be needed.

- If the form is not anonymous, in the sense that the individual is identifiable, their explicit consent to the collection of the data will be required, under the terms of the Data Protection Act (see page 36).
- Completion of the monitoring question must be entirely voluntary and this will need to be made clear.
- As with the statistical survey, but even more importantly where the survey is not anonymous, it will be essential to spell out on the form why the employer is asking this question, who will have access to the information and what will be done with the results.
- It will be important to ensure that the collected information is subject to the greatest possible degree of confidentiality and is used only for the purposes for which it is collected.

Recommendation

The TUC recommends that the disability equality plan includes a review of the internal procedures and that, following consultation with unions and disabled workers, a strategy is worked out to check whether these procedures are treating disabled workers equally. If it is decided to monitor the various procedures, it will be necessary to ensure compliance with the law on data protection and to take steps to reassure workers that the information will be used for the benefit of disabled workers.

There is also a risk that by having non-anonymous monitoring of internal procedures alongside anonymous monitoring of the workforce as a whole, that there will be some confusion caused, with a consequent fall in the participation rate. Legally, it is necessary there is no cross-checking of the data being collected by different surveys.

Exit surveys

Finally, the organisation may wish to ask workers who are leaving employment about their reasons for leaving, including asking about their experience as disabled people within the organisation. Information gained in this way can be useful in revealing areas that need management action to improve for the future. It is recommended that exit surveys are carried out by qualitative survey. The same principles of voluntary completion, informed consent and confidentiality apply.

Definitions of disability

The problems caused for monitoring by the approach used by the DDA have been mentioned. Many people who are disabled will not fit the DDA definition, and even more who are covered by the law will not consider themselves to be disabled. However, in the absence of any other generally accepted definition – and given that most employers will decide to adopt the definition used by the law – the recommendation is that a summary of the DDA definition is provided with a monitoring form: “Disability is 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.”

It may be useful to include the list of what constitutes these

Recommendation

The definition of disability to be used should be one of the issues to discuss in consultation between the employer, the unions and disabled workers

activities and to identify some of the conditions listed in the legislation or the accompanying Codes of Practice. This may encourage people with these impairments to recognise that they are included within the definition.

Action and review

It is often sensible to combine monitoring of disability with other monitoring the employer is carrying out. If they already monitor gender and race, adding disability should be straightforward. For new applicants, the monitoring form can easily be modified to incorporate a statement of policy and the “Yes/No” question. However, if existing monitoring is not anonymous, it will not be possible to include disability monitoring with other monitoring and may be necessary either to make the rest of the monitoring anonymous or to do the disability monitoring separately.

If there is no existing monitoring exercise on which to build, it may be necessary to organise a specific survey. If so, it will be particularly important to emphasise the positive reasons for asking people if they identify as disabled, what barriers they face and to stress the anonymity of the survey.

Data collected from the initial exercise should be used both as a benchmark against which to measure progress through future surveys and as a source of information about barriers and adjustments needed across the organisation, to be used as the basis for developing (or improving) plans for changes. It will be important that these plans are discussed with the unions and with disabled members and that they are widely publicised. As already emphasised, commitment to, and a readiness to implement or progress an equality plan
are essential.

It will be necessary to repeat the monitoring at regular intervals if progress is to be measured. In planning this, the organisation needs to be aware of “survey fatigue” and consider the interval between surveys. It should also be borne in mind that an individual’s impairment(s) may change through time, sometimes affecting their identification as disabled and their perception of barriers. Two years is a good period between surveys – it allows enough time to enable any changes introduced through an equality plan to become established. In some organisations, however, shorter periods may be appropriate. The Employers Forum on Disability (EFD) recommends between one and three years for repeat surveys. The new duty on public authorities will require them to review their equality schemes every three years.

Monitoring the union

Unions are covered by disability law both as trade associations and as employers. In order to comply with their obligations not to discriminate and to make reasonable adjustments, as well as to go beyond these minimum requirements to becoming champions of disability equality, unions need to undertake disability monitoring. At the time of the first TUC Equality Audit (2003), a minority of unions were carrying out disability monitoring, but more were planning to start.

Many of the same principles apply for unions as apply to employers. Unions may wish to collect data for a number of purposes, including the following, or combinations of

them:

- statistical surveys aimed at testing how far the union is reaching disabled workers, the level of participation in events, etc.;
- statistical surveys of the number of full-time disabled union staff and workplace representatives;
- information to plan to meet individual members' access needs – to both union premises and services. If the union is already operating from fully accessible premises and providing equal access to services, training, meetings and so on, this information may not be needed;
- assembling a database to provide for a network of disabled members.

It is notoriously difficult to obtain high levels of response to monitoring of the membership. This makes it all the more important to decide on a planned approach in which disability is considered alongside other equal opportunities monitoring, with clear explanations of why the data is needed and what will be done with it. Full information/training will need to be provided for officials, officers and/or workplace representatives.

Data Protection Act

Organisations planning to set up a database need to be aware that both the collection and the storage of such data are covered by the Data Protection Act. This requires that individuals give consent to having what the law calls "sensitive personal data" being stored.

The purpose of the data collection must be fully explained, consent must be freely given and data can only be used for the purpose for which it has been collected. This can be done by asking the person to sign or tick a box alongside a statement in which they explicitly give permission for their information to be stored for the stated purpose.

The form should also identify who will have access to the stored information. Strict confidentiality must apply to its storage and who has access to it.

Requests for respondents to identify anonymously as disabled are not covered by the DDA, and the TUC recommends that monitoring should be anonymous. In the limited circumstances outlined above in which monitoring may lead to an individual being recognisable as a result of the survey exercise, the law provides that the data collected is not stored in anyone's records (whether electronic or manual).

It is essential that monitoring exercises claiming to be anonymous truly are: that is, that there are no means that might lead to the individual being identifiable, such as references, numbering of forms and so on.

Conclusion

The TUC's advice is that disability monitoring has the potential, if done properly, to provide the information needed to guide an organisation towards an effective disability equality policy and will be an essential tool to measure progress towards equality targets.

Representatives should consider the following:

- Clarity about the purpose of the proposed monitoring and the use to which the data will be put is vital as the foundation of a successful survey.
- The monitoring should be an integral part of an overall equality plan, including a clear understanding of what is intended, how it will be measured, and when it will be reviewed.
- Disability monitoring should be done following consultation with disabled workers and with the relevant trade unions on the overall plan, and on the issues to be addressed, and the right questions to ask.
- The approach needs to be based in the social rather than the medical model, with the objective of identifying and removing barriers.
- Monitoring should be done by asking whether someone regards themselves as disabled, and only if appropriate by asking about their impairment group, not by identifying an individual impairment.
- Monitoring through a separate procedure should also ask people to identify barriers they face.
- Guaranteed confidentiality and anonymity except in the special situations described above are essential to obtaining a good response.

Contacts and checklist

ACAS
Helpline 08457 474747
Textphone 08456 06 16 00
www.acas.org.uk

Access to Work
AtW is contacted through the Disability Employment Adviser at a Jobcentre Plus office. Information about the scheme is found at: www.direct.gov.uk/DisabledPeople/Employment/

Department for Work and Pensions
The DWP website contains up-to-date information on the law, advice for employers and for individual disabled people, plus benefits information and more.
www.dwp.gov.uk

Disability equality training
A growing number of organisations now offer disability equality training. There is, as yet, no central means of accreditation to confirm the qualification of a given body to deliver accurate or effective training. The advice of the TUC has been to give preference to organisations offering disability equality training through disabled trainers, but in each case the advice of the TUC must be that references should be taken up and checked.

Disability Rights Commission
Helpline 08457 622633
Textphone 08457 622644
e-mail enquiry@drc-gb.org

The DRC website contains a large amount of useful information including texts of the Codes of Practice and the Disability Discrimination Act:
www.drc-gb.org

DRC Codes of Practice
The most relevant publications are the following Codes of Practice:

- Employment and Occupation
- Trade Organisations and Qualifying Bodies
- The Duty to Promote Disability Equality (for public bodies subject to the Disability Equality duty from December 2006)

Employers Forum on Disability
Offers a wide range of excellent advice designed for employers on all aspects of employing disabled people.
Nutmeg House
60 Gainsford Street
London SE1 2NY

www.employers-forum.co.uk

Trades Union Congress
The TUC publishes a range of advice for unions on all aspects of employment and has a range of information on disability issues. Much of this is available free of charge from the disability section of the TUC website, www.tuc.org.uk

Recent TUC publications include:

- Promoting Disability Equality: Advice for unions on the 2006 Public Sector Disability Equality Duty
- For advice on workplace problems consult the Know Your Rights helpline on 0870 600 4882 or the website www.worksmart.org.uk

Employer and union representative checklist

- Do not assume that because a person does not look disabled, they are not disabled.
- Do not assume that because you do not know of any disabled people working within an organisation there are none.
- Do not assume that most disabled people use wheelchairs.
- Do not assume that people with learning disabilities cannot be valuable employees, or that they can only do low status jobs.
- Do not assume that a person with a mental health problem cannot do a demanding job.
- Do not assume that all blind people read Braille or have guide dogs.
- Do not assume that all deaf people use sign language.
- Do not assume that because a disabled person may have less employment experience (in paid employment) than a non-disabled person, they have less to offer.

When implementing anti-discriminatory policies and practices at work

- Establish a policy which aims to prevent discrimination against disabled people and which is communicated to all employees and agents of the employer.
- Provide disability equality training to all employees. In addition, train employees and agents so that they understand the employer's policy on disability, their obligations under the Act and the practice of reasonable adjustments.
- Inform all employees and agents that conduct which breaches the policy will not be tolerated, and respond quickly and effectively to any such breaches.
- Monitor the implementation and effectiveness of such a policy.
- Address acts of disability discrimination by employees as part of disciplinary rules and procedures.
- Have complaints and grievance procedures which are easy for disabled people to use and which are designed to resolve issues effectively.
- Have clear procedures to prevent and deal with harassment for a reason related to a person's disability.
- Establish a policy in relation to disability-related leave, and monitor the implementation and effectiveness of such a policy.
- Consult with disabled employees about their experiences of working for the organisation.
- Regularly review the effectiveness of reasonable adjustments made for disabled people in accordance with the Act, and act on the findings of those reviews.
- Keep clear records of decisions taken in respect to each of these matters.

Recommendations are taken from the Disability Rights Commission's Code of Practice for Employment and Occupation.