

Disability and 'hidden' impairments in the workplace

A toolkit for trade unionists
Wales TUC Cymru

About the disability and 'hidden' impairments in the workplace toolkit and course for union reps

The aim of this toolkit is to provide information to help union officers and reps in Wales to improve disability equality in the workplace and represent disabled members, including those with non-visible or 'hidden' impairments. It aims to help reps to address workplace issues and barriers that can create problems for disabled workers.

It provides tools and ideas to help union reps tackle discrimination as well as examples of good practice. This toolkit is also a resource for the Wales TUC's Disability and 'Hidden' Impairments in the Workplace course.

The toolkit and course have been developed by the Wales TUC in response to a survey we carried out which found that many disabled workers want to see a change in the way that disability is treated at work.

The Wales Trades Union Congress (Wales TUC) exists to make the working world a better place for everyone. We want Wales to become a fair work nation.

With 49 member unions and over 400,000 members in Wales, the Wales TUC has a key role in raising issues that affect disabled people in the workplace.

We support unions to grow and thrive, and we stand up for everyone who works for a living. Join us.

Disability and 'Hidden' Impairments in the Workplace course

This two-day course has been designed for trade union reps and aims to create greater awareness of disability equality issues in the workplace (including issues facing workers with 'hidden' impairments).

The course is for all union reps and aims to:

- Raise awareness of the prejudice and stigma that disabled workers can face
- Help reps identify workplace barriers that negatively impact on disabled workers and

understand the importance of the social model of disability

- Consider workplace policies, cultures and practices that may be discriminatory against disabled workers
- Consider best practice in terms of workplace policies, practices and reasonable adjustments
- Support members to disclose their impairments (to access reasonable adjustments)
- Work with disabled members to tackle discrimination and campaign for greater disability equality in the workplace

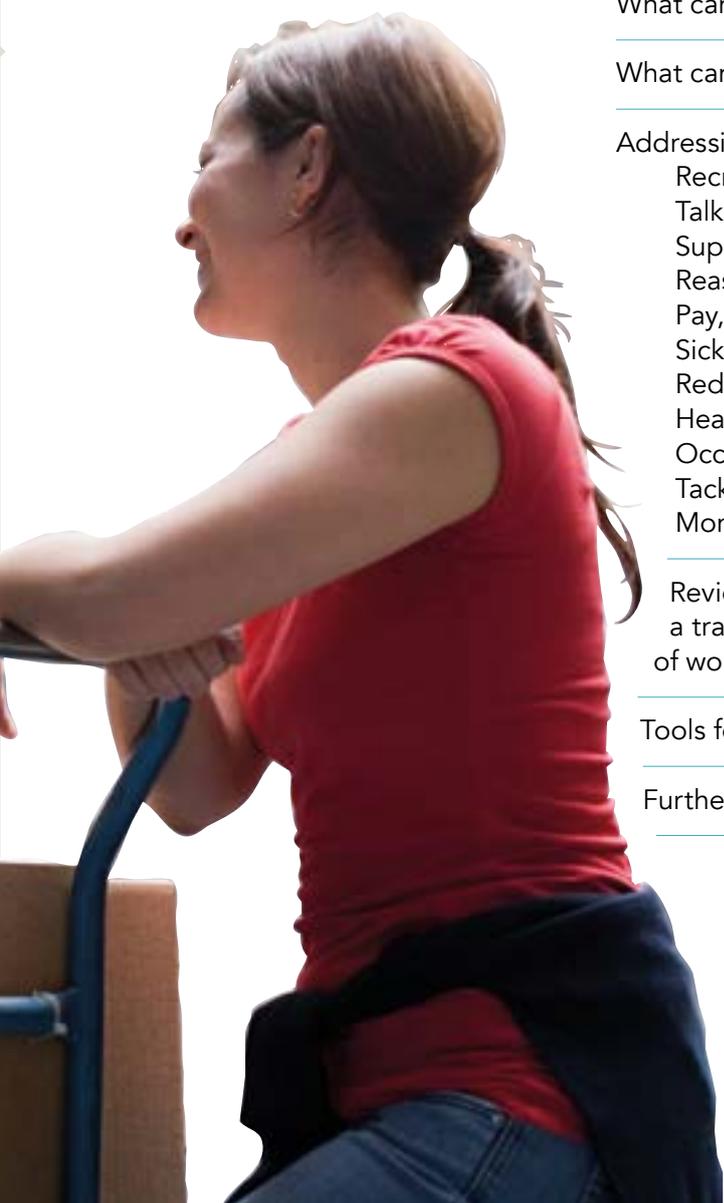
Contact wtuceducation@tuc.org.uk for information about courses running in your area.

A supporting eNote (an online briefing for reps) is available at www.tuceducation.org.uk



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'Hidden' impairments and disability equality in the workplace

Of the hundreds of thousands of disabled people living in Wales today, only a relatively small number are people with 'visible' impairments (such as wheelchair users and people with guide dogs). The majority of disabled people have 'hidden' impairments that are not immediately obvious to someone who doesn't know their circumstances.

Around 1 in 4 people in Wales report having a disability or 'limiting' long-term health condition, yet according to research by Scope, nearly half of the British public say that they do not know anyone who is disabled. This shows that there is a big gap between people's perceptions and reality – it is highly unlikely that nearly half the population do not know any disabled people. It reflects the fact that a large number of people do not recognise that many more people are disabled than those who can be identified by sight alone.

Unfortunately, the belief that 'real' disability can be seen often leads to the assumption that anyone who is not visibly impaired is "not really disabled".

Everywhere from car parks to public transport to the workplace, disabled people whose impairments are not apparent to others report being challenged with the words "you don't look disabled" (for example, for using a disabled parking space or toilet). In the workplace, people with 'hidden' impairments report that such comments are often used to show disbelief or challenge their right to reasonable adjustments.

Sometimes managers may use such comments as an excuse for refusing to offer support, or colleagues may imply that the disabled person is somehow seeking to gain unfair advantage. It can be an extremely stressful experience for workers with hidden impairments to have to manage their condition without adjustments or support and carry

out their job in the face of hostility from managers and colleagues.

After hearing these and other accounts of the barriers that continue to be faced by many disabled workers with hidden impairments, the Wales TUC carried out a major survey to investigate the experiences of disabled workers in Wales.

More than 1000 people responded to the survey and shared their own personal experiences. The research uncovered some concerning findings and showed that many disabled workers want to see a change in the way that disability is treated at work:

- Over a quarter (28 per cent) of disabled respondents said they felt that their employer views disability as a 'problem' in the workplace and one in three (33 per cent) said they felt their colleagues view it as a 'problem' in the workplace.
- Over half (57 per cent) of disabled respondents said that they do not feel that people are treated equally in their workplace compared to 38 per cent of non-disabled respondents.
- Two thirds (67 per cent) of disabled respondents said they felt there was more stigma associated with disabilities that others cannot see.
- Over three-quarters of all respondents said that their workplace had policies in place to help disabled workers but a significant number reported that these did not work in practice due to poor, non-existent or inconsistent implementation.
- Around one in three (32 per cent) of disabled respondents reported that disability had been treated as a 'joke' topic in their workplace, and many reported experiencing harassment.
- Around three quarters (74 per cent) of all respondents reported that their workplace had put in place 'reasonable adjustments' to

help disabled workers, however many disabled respondents reported problems, delays and inconsistencies with the implementation of reasonable adjustments.

The need for further trade union action to be taken on the issue and for guidance and training from the Wales TUC to facilitate this was supported by around nine out of ten of disabled respondents to the survey.

The findings of this research also identified a need for wider action and changes to improve the situation for workers with invisible disabilities in Wales (such as action from Welsh Government and UK government). As a result, the Wales TUC has put together a list of 'campaign asks' to campaign for improvements. A link to the campaign asks can be found here www.tuc.org.uk/DHIWcampaignasks

Unions have a key role in raising awareness of 'hidden' disabilities in the workplace and tackling the

stigma, prejudice and barriers that many disabled workers continue to face. Union reps can use this toolkit as a resource to help support disabled members and press employers to take action to improve disability equality in the workplace.

57%
of disabled respondents
said that they do not feel
that people are treated
equally in their workplace



What is disability? The social model versus the medical model

The medical model of disability

The medical model is a way of thinking about disability that has deep roots in our culture and has dominated much political and legal decision making as well as media coverage about disability. Although it is based on outdated concepts, it still affects the way people understand disability today. Many people are influenced by the 'medical model' without realising.

The medical model says that disability arises from an individual's medical condition and the way that it affects their ability to carry out certain tasks.

Therefore, the way to resolve a person's disability is for medical professionals to treat or 'cure' their condition and in that way, bring about equal access compared to a non-disabled person. If the disabled person is unable to be 'cured', or to adapt to fit into the world as it is, the medical model accepts their exclusion.

It is a way of viewing disability that implies that it is the person's impairment that is the cause of their disadvantage or exclusion and that the lack of access or disadvantage is a problem for the individual disabled person to resolve, rather than being the responsibility of wider society.

The social model of disability

The social model takes a completely different approach: it is not the disabled person's medical condition or impairment that is the cause of their disability but it is the barriers that society puts up in the way of disabled people's participation (including both attitudes and practical barriers) which are the cause of their disadvantage and exclusion. The social model was developed by disabled people and aims to identify and remove the barriers that prevent disabled people accessing work, services and living independently.

The social model makes a distinction between impairment and disability. Impairment is described as "a characteristic or long-term trait, which may, or may not, result from an injury, disease or condition". Disability is not the impairment itself but is the difficulty experienced by people with an impairment when the barriers put up by society interact with their impairment to deny them access or participation. Under the social model it is not the responsibility of the disabled person to solve

the barriers and the potential problems they face - the duty is transferred on to society to remove barriers and provide access.

The Welsh Government formally adopted the social model of disability in 2002. This means it has made a commitment that the social model must be reflected in the policies and services it delivers and the language it uses. The social model has also been adopted by the United Nations and is the basis of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) which was ratified by the UK Government in 2009. The convention is now being cited in UK courts although it should be noted that the Equality Act 2010 still defines disability using the 'medical model'.

The trade union movement supports the social model of disability. The TUC has called for the Equality Act 2010 and all UK laws impacting on disabled people to be reviewed to make them compliant with the UNCRPD.

How can the medical model and the social model affect the way employers treat disabled workers?

Example 1

An employer who is influenced by the medical model decides not to employ someone who they are aware has autism because they wrongly assume that because of their condition, they won't be capable of doing the job. They don't consider the skills and talents that the individual might offer or ways in which the workplace could be adjusted to remove any barriers that might prevent equal access. They assume that an autistic person wouldn't 'fit in'.

An employer who is influenced by the social model recognises that there are workplace policies, practices, environments, unwritten rules and attitudes that may not take the needs of autistic people in to account. They recognise that autistic workers have skills and talents they can bring to the workplace and understand that they should work with individual autistic workers to identify and remove barriers to make the workplace fully inclusive and accessible to them. They are aware that there is prejudice and ignorance about autism and so they provide neurodiversity and autism awareness training to help raise awareness and improve understanding amongst others in the workplace.

Example 2

An employer who is influenced by the medical model decides to use the capability procedure to 'manage out' a worker who develops a mental health problem, because they assume this means the person is no longer 'up to the job'. They dismiss the worker rather than consider how the workplace could be adjusted to accommodate their needs and support them to remain in work.

An employer who is influenced by the social model recognises that adjustments and support might be needed for a worker who develops a mental health problem. The employer talks to the worker to identify what support and adjustments are needed (including properly addressing any issues in the workplace that are contributing to mental health problems, such as workplace stress). Adjustments and support are put in place and the worker is able to continue to carry out their role and they later recover.

As these examples show, following the 'medical model' can often cause employers to behave in a way that is discriminatory towards disabled workers.

One of the best ways for union reps to prevent discrimination arising in the first place is to raise awareness of the social model with employers and within the workplace more generally. With more progressive employers it may even be possible to persuade them to formally adopt the social model within workplace policies.



What are the key barriers and disadvantages faced by disabled people in Wales?

Wales has a higher proportion of people living with a disability or long-term health condition than the UK overall and so is particularly hard-hit by the disadvantage faced by disabled people. Current evidence shows that in the UK as a whole progress towards disability equality has stalled and disabled people are facing more barriers:

- Less than half of disabled adults are in employment and stigma and ignorance mean that those with impairments such as mental health problems, learning disabilities and autism spectrum conditions are even more likely to be out of work.
- Disabled people earn less per hour on average compared to non-disabled people, even when factors such as qualification level and job type are taken into account.
- UK government austerity and benefit reforms have had a huge impact on disabled people. Changes have often failed to uphold disabled people's rights and have increased the risk of poverty, disadvantage and exclusion.
- Disabled people's lives are negatively affected by a combination of lack of awareness, stereotypes in the media, and wide-spread prejudice and unconscious bias which often goes unchallenged and can fuel discrimination and harassment.
- The growth of insecure work and changes to the way work is organised have caused particular problems for disabled workers.

The 'disability employment gap'

The disability employment gap is the difference in employment rates between disabled people and non-disabled people. Currently in the UK less than half of disabled adults are in employment, compared to around 80 per cent of non-disabled adults. This is a gap of more than 30 per cent. The gap has remained virtually unchanged over the last decade.

The disability employment gap reflects the many levels of discrimination that disabled people can face. Sometimes this discrimination happens outside of the workplace (for example, barriers in education, problems with healthcare or housing or difficulties accessing transport). Or problems can happen at the recruitment stage (e.g. a lack of suitable job opportunities with flexible hours, or barriers at the application or interview stage). Unless the situation improves many disabled people who want to work will continue to be excluded from the workplace.

The 'disability pay gap'

The 'disability pay gap' describes the difference in average hourly earnings between disabled people and non-disabled people. Currently in the UK disabled people earn on average between 10 – 20 per cent less than non-disabled people.

Although the reasons for this gap are sometimes complex it is clear that discrimination must play a big role. Disabled people still earn much less on average than non-disabled people, even when differences such as their type of job, age and qualification level are accounted for.

UK government austerity and disabled people

Since 2010, UK government austerity and changes to the benefit system have had a negative impact on disabled people in Wales. A recent UN report found that in implementing its austerity policies, the UK government had failed to uphold the rights of disabled people, affecting everything from access to

Disabled people's lives are affected by the widespread negative stereotyping of disabled people in the media and society generally.

healthcare and housing to equality in education and work.

Changes to key disability benefits have resulted in many disabled people receiving less money or having their entitlement to benefits removed or reduced. Disability organisations have reported that many people have experienced problems such as difficulties paying for food, rent or bills as a result. A recent High Court ruling found that some of the changes the UK government had made to the disability benefit system 'blatantly discriminate' against people with mental health conditions.

Some of these changes have also resulted in disabled people losing their entitlement to Motability cars. Because there is often a lack of accessible public transport, this means that many disabled people have lost their only means of getting to work. The UK government has also introduced caps on the Access to Work fund (the fund which helps to fund the cost of reasonable adjustments in the workplace) which has reduced the support available for some disabled workers, such as those who require sign language interpreters.

Stereotyping in the media

Disabled people's lives are affected by the widespread negative stereotyping of disabled people in the media and society generally. Many of these stereotypes, such as those about 'benefit cheats' accused of 'faking' disability or those about people with mental health problems being 'dangerous' are false and very harmful. They can lead to ignorance and hostility towards disabled people (particularly those with 'hidden' impairments) and create stigma which makes it much less likely that a disabled person will feel comfortable to disclose and be able to access adjustments they may need. They can also lead to problems such as harassment and hate crime.

Other forms of stereotyping can also be misleading and lead people to make assumptions that

disabled people are somehow 'less capable' or encourage them to see disabled people as objects of pity or charity. Sometimes this creates so-called 'benevolent prejudice' which can lead people to be patronising towards disabled people. This could be by expecting less of them or failing to recognise that disabled people share the same common aspirations and rights as others, such as the right to live independently and the desire to work.

Unconscious bias towards disabled people

Unconscious bias can arise from prejudices that people do not realise they hold but which can heavily influence thinking and lead to snap judgements and assumptions about others. It is a process that happens outside of a person's control and without their awareness.

Everyone has unconscious bias as to process information more quickly and effectively, the brain (influenced by culture, media and life experience) continually builds up thought patterns, interpretations and assumptions without us realising. In some circumstances, these thought processes or 'biases' can be useful as they can help people react quickly to new situations and cut through 'information overload'. However, they can also lead people to get things wrong, by developing unhelpful stereotypes or making snap decisions which are unfair or discriminatory against others.

Unconscious bias can heavily influence areas of work such as recruitment, promotion, performance appraisals, pay and workload allocation. Employers have a duty to take steps to reduce the impact of unconscious bias because where the unconscious bias is directed towards a 'protected characteristic' such as disability, it can be discriminatory (even though it is not conscious or deliberate).

Research has shown that unconscious bias against disabled people is higher than for other 'protected characteristics' (for example, compared to race or gender). An example of the way that bias affects



perceptions of disabled people is demonstrated in research by Scope which found that 36 per cent of the public tend to think of disabled people as 'not as productive' as everyone else and that a quarter of disabled people have "experienced attitudes or behaviours where other people expected less of them because of their disability".

The rise of the 'gig' economy and work 'intensification'

The rise of the 'gig' economy, that is the growing use of zero-hours and other types of insecure employment, has made it much easier for bad employers to dismiss workers. These contracts often leave disabled workers feeling too vulnerable to disclose that they have an impairment that may need adjustments, for fear that the employer may decide

it is easier to dismiss them.

Work 'intensification' is described as "the process of raising the expected workload of an employee by increasing the amount of tasks to be undertaken or shortening the time allowed to complete those tasks". Examples of tools used to increase work intensification include some sickness-absence management policies (where they are used to cut absence rather than support workers experiencing ill health and invoke disciplinary triggers after just a few absences) and performance management systems (which can sometimes involve unrealistic or rigid targets). The misuse of such policies has too often created a culture of discipline and stress rather than support which has been particularly unhelpful to some disabled workers.

Disabled workers who have more than one 'protected characteristic' can often face multiple levels of discrimination and 'penalties' in employment



Multiple levels of discrimination

Disabled workers who have more than one 'protected characteristic' can often face multiple levels of discrimination and 'penalties' in employment – for example disabled women have some of the lowest levels of hourly earnings. Disabled black and minority ethnic (BME) workers already face discrimination and 'penalties' in areas such as pay and progression because of race discrimination and can then experience 'penalties' and discrimination because of disability on top of that.

As well as other forms of discrimination, workers may experience harassment linked to their disability at the same time as harassment linked to another protected characteristic (such as being a woman, being from a BME background, their LGBT+ status or age). This can be an extremely stressful and isolating experience that can be traumatic and have a very negative affect on a person's mental and physical health and wellbeing. This is especially true where the harassment goes unchallenged and there is a lack of support or reluctance to tackle such behaviour on the part of the employer.

"While there are policies protecting disabled people, **it is down to individual managers to implement them, and they don't.**"

"I have a medical condition... **whilst it is not a disability you can see, it can and does affect my daily life** and can occasionally affect my attendance at work. Nicknames such as 'sick-note'... have added stigma to me."

"After recently returning after a long-term absence I genuinely feel that as a woman in the workplace **my skills and experience are not valued.** I have been left in a position that is not suitable and completely unsupported."

"We have lots of policies on equality and equality is always on the agenda but then, when I thought about it fully, I realised that I actually see fewer women, BME and disabled colleagues at the senior management level. **White men still seem to be in the top positions.**"

"**People can readily see a broken leg but cannot see a mental health condition.** People just don't understand and not enough is done to educate colleagues to try to remove the stigma... There's sometimes the impression that people think it is just being 'put on' and isn't real."

"Largest cause of sickness is stress and depression. As this is not visible **sufferers are treated abysmally** and normally managed out."

"I have had multiple managers who completely discount asthma as a disability or something that could affect my everyday life, dismissed my experience of living with it. **I've had to fight for adjustments** over how I am treated over it."

Disabled workers' experiences (responses to our survey):

"I have a hidden disability, endometriosis, which causes chronic fatigue, chronic pain, infertility, depression, anxiety, pain throughout the month (not just during periods), amongst many other symptoms. Not many people know about the condition and **because I look what is classed as 'normal', people would not suspect I have an impairment and can be less supportive** and understanding because they can't see it or they don't understand it."

"Negative comments such as: 'Had I known you had a stroke, I would not have taken you on' was said, 'You should not have symptoms 10 years on', 'I sometimes don't know what you are saying - just rubbish.' None of these are appropriate but have been said to me."

"Multiple sclerosis has many symptoms, some visible and some invisible. The former cannot be hidden but **it's the invisible that can be difficult to talk** about e.g. incontinence and urgency, cognition and fatigue."

"There seems to be a **perception among some managers that disabled people are less capable of doing a good job.** This is often out of a subconscious and misplaced sense of care and concern, which influences whether they see disabled people as equally capable."

"A few years ago, I was on 6 weeks sick leave due to stress, anxiety and depression. This was exacerbated due to as soon as the sick note went in my team manager sent me straight up to Occupational Health, only to be told 'I didn't look stressed'. As you can imagine I left the building, sat in my car and broke down in tears. **This made me feel like no one believed a word I had said** and made me more withdrawn with not nice thoughts."

Why disability equality is a trade union issue

Unions have long been at the forefront of the campaign for equality, whether through the struggle for equal pay or maternity rights.

Unions fought hard for legal protections for disabled workers, and the Disability Discrimination Act 1995 and later the Equality Act 2010 were important milestones in the campaign for greater disability equality.

We know that union reps already make a huge difference within the workplace. Evidence shows that unionised workplaces are more likely to have better equal opportunity practices. Union reps have a huge impact in terms of promoting equality in the workplace and improving employers' policies and practice towards disabled workers. This is especially true where union reps have received training to help them represent members on equality and disability issues.

However, the barriers facing disabled people are still many and there is much more that needs to be done both within and outside the workplace for disability equality to be achieved.

'Nothing about us without us' - trade unions and disabled workers

The trade union movement supports the demand of the disabled people's movement: 'Nothing about us without us'.

Many trade unions have their own structures for disabled members; if so, it may be useful to invite and welcome disabled members' involvement in these. Disabled workers are more likely to be union members than those who are not disabled but monitoring from unions suggests an under-reporting of disability among members.

The TUC's *Equality Audit 2014* found that almost half of unions monitor for disability but that monitoring disability can be much more difficult than monitoring gender, age or ethnicity. Some individuals may not

want to disclose a disability and others may not consider themselves to be disabled, for example, if they have a condition that is well managed. This can be especially true of those with 'hidden' impairments and those who 'acquire' their impairments later in life.

There is still often a level of misunderstanding or a sense of unease among members when they are asked about whether they are disabled for union membership records. Many unions are raising awareness of disability issues and refining the questions used in monitoring to try to overcome these barriers to disclosure. There has also been an increase in the proportion of unions taking steps to encourage recruitment of disabled members and promoting their engagement in the union. The vast majority of trade unionists are now in a union that has a national disability committee or structure. Having such a mechanism is a vital step in ensuring the voice of a union's disabled members is heard.

It is important to note that unions are also subject to the law: the Equality Act placed obligations on unions as "trade associations". This means unions must ensure they don't discriminate against a member or applicant, on grounds of disability in the provision of access to training or events, publications, level of representation, benefits, meetings and election procedures.

Unions also sometimes work with organisations of disabled people, and trade unionists may benefit from their expertise. Many unions find that making these links can also be very helpful in breaking down barriers and building links in local communities. It can also help in raising awareness among non-members of the benefits of joining a union and the support unions can provide.



Disability and the law

The Equality Act 2010

How is disability defined under the Equality Act?

Under the Equality Act 2010, a person is considered to have a disability if they have a **physical or mental 'impairment'** and the impairment has a **substantial and long-term adverse effect** on their **ability to carry out normal day-to-day activities**.

Long-term – means expected to last at least a year, likely to recur or expected to continue for the rest of the person's life.

Substantial adverse effect – means that the effect of the impairment is more than minor or trivial. It may fluctuate or change and it does not have to be present all the time. The cumulative effect of several 'lesser' effects on more than one activity may add up to a 'substantial adverse effect'.

Normal day-to-day activities – this includes everyday things such as eating, washing, walking, and going shopping. The Act does not specify work as a day-to-day activity. However, many types of work involve what may be considered day-to-day activities. Examples of activity commonly considered to be covered are writing, communicating and interacting with others, using a computer, remembering or following instructions, keeping to a timetable, using a phone, sitting down, standing up, driving or lifting and carrying everyday objects.

What counts as an impairment?

There is no definitive list of 'physical or mental impairments' contained in the Equality Act. Instead to be covered by the legal definition the impairment must meet the criteria of having a long-term, substantial adverse effect on a person's day-to-day activities. The only exception to this rule is a small number of impairments that are listed as 'deemed' disabilities under the Act - this means that people with these impairments are automatically covered by the law without having to show that they have an impairment that has (or is likely to have) a substantial, adverse, long-term effect on the ability to carry out normal day-to-day activities. These include certain visual impairments (where these are certified by an ophthalmologist) and severe disfigurement. Cancer, multiple sclerosis and HIV are also automatically covered from the point of diagnosis.

An impairment does not have to be the result of an illness, and it is not necessary to establish the cause of a disabled person's impairment, in fact the cause of a person's impairment is irrelevant. It may

fluctuate and an impairment may be physical or mental or both. A disabled person may have more than one impairment which together combine to create a 'substantial adverse effect'.

An impairment does not have to be visible. The legal definition of disability includes millions of people who don't look different on the outside. Some of the conditions that people have that make it difficult for them to carry out ordinary day-to-day activities without adjustments include:

- Mental health problems such as depression, schizophrenia, bipolar affective disorder, obsessive compulsive disorders, eating disorders and personality disorders;
- Conditions such as dyslexia, dyspraxia, autism spectrum conditions (including Asperger's syndrome) and epilepsy;
- Progressive conditions such as rheumatoid arthritis and motor neurone disease;
- Chronic conditions such as diabetes, chronic fatigue syndrome and asthma;
- Sensory impairments, such as hearing loss

An impairment does not have to be visible. The legal definition of disability includes millions of people who don't look different on the outside.

→ People with cancer, multiple sclerosis and HIV are specifically protected from the time of diagnosis

These are just some of the conditions that are normally invisible but that would usually meet the definition of a disability under the Equality Act. There are many others.

What if someone's impairment is improved by treatment or if it resolves?

It does not matter if the effect of a person's impairment is lessened or removed by treatment (such as anti-depressants) or physical adaptations (such as an artificial leg). The person is still considered disabled as the legal 'test' is based on how they would be if the treatment or adaptation was removed.

If someone used to be disabled but has now recovered from their impairment they still qualify for protection under the Equality Act.

What about progressive conditions?

If someone has a progressive condition (e.g. muscular dystrophy) that is likely to have a substantial adverse effect on their ability to carry out normal day-to-day activities in future then it will be treated as a disability under the Act from the point at which it has some effect on their ability to carry out normal day-to-day activities.

The person should be considered as disabled from this point onwards (even if initially the impact does not amount to a *substantial* adverse effect) because the impairment is likely to worsen and become substantial in future. This means that a person with a progressive condition may qualify for protection *before* the adverse effect of their impairment becomes substantial.

What and who does the Act cover?

The Equality Act covers discrimination in employment and vocational training, the provision of goods and services, public functions, education, premises and associations.

In employment the protection applies to 'employees' and 'workers' which means it gives the right not be discriminated against to people such as contract

workers, agency workers and office holders. It also covers job applicants and people undertaking work experience for the purpose of vocational training.

Exclusions

Certain conditions and tendencies are specifically excluded from the definition of disability under the Act. These include:

- addiction to alcohol, nicotine or any other substance (although addictions arising out of the result of medically prescribed drugs are not excluded)
- a tendency to set fires
- a tendency to steal
- a tendency to physical or sexual abuse of others
- exhibitionism
- voyeurism
- seasonal allergic rhinitis (e.g. hay fever)

Reasonable adjustments

The Equality Act states that a disabled worker is entitled to 'reasonable adjustments' where they would be at a substantial disadvantage compared to a non-disabled colleague. The requirement covers "provisions, criteria and practices" (this usually includes workplace policies, rules, procedures and requirements regardless of whether or not they are written down). It also covers "physical features" and the "provision of auxiliary aids" (such as an adapted keyboard or sign language interpreter). Guidance as to what is considered 'reasonable' is provided by the EHRC Statutory Code of Practice.

The key principle to note is that under the Equality Act, disabled workers are entitled to be treated **more favourably** in order to remove the disadvantage they already face and arrive at a more equal outcome. For example, this might mean allowing a disabled worker additional paid disability leave which non-disabled workers are not entitled to, if the disabled worker requires additional time off due to their impairment. This key difference is often poorly understood, particularly where managers have not been adequately trained. This can lead to bad practice based on the misconception that equality is about treating everyone the same.

Discrimination

A 'disabled person' is protected from discrimination on the grounds of their disability. Disability is a 'protected characteristic' under the Act.

People who are 'associated' with a disabled person (e.g. a worker with caring responsibilities for a disabled relative) and those who are 'perceived' to be disabled (e.g. someone who is thought to have a mental health condition, even though they do not) are also protected from some (but not all) types of discrimination.

There are six forms of disability discrimination which are 'prohibited conduct' under the Act:

→ **Direct discrimination** – less favourable treatment because of disability, compared to someone whose circumstances excluding the disability are otherwise comparable. Protection includes people who are discriminated against because of a 'perceived' disability and those who are 'associated' with someone with a disability (e.g. carers).

e.g. an employer decides not to promote a disabled worker with a mental health condition to a more senior role, even though they are the best candidate, because the employer assumes the disabled worker will 'not be able to cope with the pressure' because of their impairment. They promote a less qualified/experienced candidate who is not disabled.

→ **Indirect discrimination** – a provision, criterion or practice which is applied to everyone equally but which puts a disabled worker at a disadvantage compared with others and cannot be justified by the employer as 'a proportionate means of achieving a legitimate aim'.

e.g. making a driving licence an essential requirement for a post when the duties of the job do not require the post holder to drive. This could unfairly exclude many candidates whose impairments mean they cannot hold a driving licence.

→ **Harassment** – 'unwanted conduct' related to a person's disability that can include bullying, nicknames, threats, intrusive or inappropriate comments, excluding, isolating or insulting someone. To be defined as harassment, it must have the purpose or effect of violating the disabled person's dignity or creating an intimidating, hostile, humiliating, or offensive environment. Protection includes people who

are harassed because of a 'perceived' disability and those who are 'associated' with someone with disability (e.g. carers).

e.g. name calling or mocking a disabled person because of their disability.

→ **Victimisation** – this is when a worker suffers damage, harm or loss (known as a 'detriment') because of making an allegation or supporting a complaint of discrimination, giving evidence relating to a complaint about discrimination, raising a grievance about an equality or discrimination issue or anything else in connection with the Equality Act 2010.

e.g. an employee is singled out for selection for redundancy after making a complaint about harassment and the employer cannot show that the selection for redundancy has been made fairly or that it was a genuine redundancy.

→ **Discrimination arising from a disability** – treating someone unfavourably because of something arising as a consequence of their disability. Such discrimination is capable of legal justification by the employer if they can show the treatment is a "proportionate means of achieving a legitimate aim". In addition, there will be no discrimination if the employer shows that it did not know, and could not reasonably have been expected to know, that the person had the disability.

e.g. a disabled worker is refused a bonus on the basis of their absence record when the employer is aware of their disability but still included their disability-related sickness in their absence record.

→ **Failure to make a reasonable adjustment** – an employer is under a legal obligation to make reasonable adjustments where a disabled worker is at a 'substantial disadvantage' compared to a non-disabled colleague, to enable them to work or continue to work. There can be no justification for a failure to make a reasonable adjustment, but in certain circumstances an employer can argue that an adjustment is not "reasonable".

e.g. refusing to allow an autistic worker with hypersensitivity to noise to move to a quieter desk away from the photocopier when there is no reason the request could not be accommodated.

What if an employer does not know a worker is disabled?

For a disabled worker to be fully protected from all types of discrimination, an employer must know or be reasonably expected to have known that they are disabled. This rule applies in terms of accessing the right to reasonable adjustments, making a complaint about failure to make a reasonable adjustment and discrimination arising from a disability. This is one of the reasons why it is so important that members with 'hidden' impairments should be encouraged to disclose their disability as it may be less likely that an employer could be reasonable expected to know about their disability.

What is a "proportionate means of achieving a legitimate aim"?

Under the legislation, it is possible for indirect discrimination and discrimination arising from a disability to be 'objectively justified' in certain circumstances. This means the employer can show that they have a good reason for the discrimination, which is described as a "proportionate means of achieving a legitimate aim". This might be due to something linked to the intrinsic nature of the job (for example, a fitness requirement for firefighters).

It must be a good reason that is genuine and can stand up to scrutiny, for example it can't be just because the employer thinks it is easier or cheaper. The employer must be able to show that no practical alternatives are available. Ultimately, it would be an employment tribunal that would judge

whether the discrimination can be justified as a "proportionate means of achieving a legitimate aim" and the evidence would be carefully considered in each individual case.



The limitations of the Equality Act

The Equality Act's definition of disability is based on the medical model of disability. Although the Act includes a duty to make reasonable adjustments this can be undermined by the fact that to legally qualify for this entitlement, the disabled person has to meet a definition of disability which is rooted in the medical model. In this way it focusses attention on the individual's impairment and their ability to carry out normal day-to-day activities, rather than the barriers that society puts in the way of disabled people.

As a result, cases can often arise because rather than encouraging employers to recognise that there are barriers, the way disability is defined under the Act can sometimes mean that bad employers try to get out of their responsibilities instead by arguing that the complainant is not disabled 'enough' to qualify for protection. This results in the claimant having to 'prove' that they are disabled by demonstrating what they cannot do. If this is proven, then they have to show that an adjustment the employer could have made would have been a reasonable step for them to take. This is a process that creates unnecessary stress and delays.

Trade unions and many disabled people feel that the Equality Act should be changed so that it meets the UK's obligations under the UN Convention on the Rights of Persons with Disabilities which is based on the social model of disability.

Where the employer is more progressive, reps may be successful in seeking to negotiate for better than the legal minimum and may be able to negotiate more supportive and inclusive workplace policies, based on the social model. But unfortunately often it remains the case that many employers will be reluctant to go any further beyond the bare minimum of what is required in law.

It should be noted that this guide is often obliged to follow the language of the medical model because



The Public Sector Equality Duty (Wales)

The Public Sector Equality Duty was created by the Equality Act. The duties are set out in the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 which were brought in by the Welsh Government and came into force in April 2011.

The Act aims to ensure public authorities and those carrying out a public function consider how they can positively contribute to a fairer society in their day-to-day activities through paying due regard to eliminating unlawful discrimination, advancing equality of opportunity and fostering good relations between those with a 'protected characteristic' (such as disability) and those who do not share the same protected characteristic.

Public bodies such as NHS Wales, local government and other bodies carrying out public functions are under a duty to consider equality when making decisions both in terms of service delivery and employment. The Regulations place duties on the devolved public sector, including Welsh Government, covering equality impact assessments, publishing and reviewing Strategic Equality Plans, organisational objectives, engagement, staff training, procurement, reporting arrangements and equality and employment information.

Public bodies must collect and publish data about their workforce on an annual basis. This includes information about disabled workers in terms of how many disabled people:

- are employed
- have applied for jobs within the organisation
- have applied to change position (identifying how many were successful)
- have applied for, been successful in applying for and/or have completed training

- have been involved in grievance or disciplinary procedures
- have left the organisation

Public bodies do not currently have an explicit duty to collect or publish a breakdown of the different jobs, pay, grading, contract types or working patterns held by disabled workers compared to non-disabled workers or to report on the disability pay gap within their organisations. They are only currently required to collect and publish this information about men and women. However, unions can make a case for this additional information to be collected for the purpose of monitoring disability equality.

For union reps looking to negotiate with employers to improve disability equality policies it is helpful that the Public Sector Equality Duty means public authorities must pay due regard to:

- removing or minimising disadvantages experienced by people because of their protected characteristic
- taking steps to meet the needs of protected groups where these are different to the needs of other people, this includes taking steps to take account of disabled people's disabilities.

The Social Services and Well-being (Wales) Act 2014

The Social Services and Well-being (Wales) Act came into force in Wales in April 2016.

The Welsh Government describes it as a “new law for improving the well-being of people who need care and support, and carers who need support for those who they care for”. The Act changes the way that people access social services support.

In terms of the Act, “well-being” in relation to an adult, means well-being in relation to any of the following: physical and mental health and emotional well-being; protection from abuse and neglect; education, training and recreation; domestic, family and personal relationships; contribution made to society; securing rights and entitlements; social and economic well-being; suitability of living accommodation; control over day to day life and participation in work.

Under the Act, changes have been made to the way that people’s needs are assessed and the way that services are delivered, giving people more of a say in the care and support they receive. There is an emphasis on promoting a range of services and

help within the community to reduce the need for formal, planned support and instead working with individuals to discuss what they want from their lives and look at what help they may need to achieve this.

Local authorities can provide more information and assessments for anyone who feels they may need support, for those already receiving support and to carers.

It is helpful for reps to be aware of the right to assessments under the Act, so they can signpost any members who feel that they would like more support to help them to maintain participation in work. This can include more support at home or outside of work. Reps should be aware that members who acquire impairments later in life or those who develop caring responsibilities may be unaware that they might be eligible for support.

It is helpful for reps to be aware of the right to assessments under the Act, so they can signpost any members who feel that they would like more support to help them to maintain participation in work. This can include more support at home.

The Well-being of Future Generations (Wales) Act 2015 and the Strategic Equality Plan 2016-2020

The Welsh Government has also recognised the importance of equality within the Well-being of Future Generations (Wales) Act and in more detail with its Strategic Equality Plan 2016-2020.

Its current Strategic Equality Plan has eight objectives linked to provisions in mental health, education, accessible advice resources, reducing poverty and improving living conditions plus actions to identify why inequalities in things like pay and employment persist.

For more information visit www.wales.gov.uk





How workplaces create barriers for disabled people

Our survey identified a number of workplace factors that could create barriers for disabled workers, including those with 'hidden' impairments:

- Delays and problems obtaining reasonable adjustments
- Poor understanding of disability equality and the social model of disability
- Emphasis on proving workers are disabled 'enough' to meet the legal definition of disability rather than providing the support and adjustments that are needed
- Inflexible working time rules and unwillingness to provide non-physical adjustments, such as changes to working hours or job roles
- Lack of support and low levels of awareness and understanding about disability among colleagues and managers
- Lack of suitable policies or (more commonly) poor/inconsistent implementation of existing policies
- Other workplace policies and procedures that do not take account of the needs of disabled workers (e.g. recruitment, sickness absence or performance management policies that unfairly discriminate against disabled workers)
- Lack of general disability equality training provision to raise awareness and encourage the proper implementation of policies by managers
- Lack of training provision to raise awareness of the issues faced by workers with specific impairments such as autism awareness, mental health awareness or d/Deaf awareness training
- Lack of line manager or more senior management commitment to disability equality and poor monitoring of disability and enforcement of policies
- A culture of bullying and harassment and a lack of action to prevent and effectively tackle harassment of disabled workers
- Lack of consultation with disabled workers
- Excessive workloads and workplace stress
- Lack of opportunities for disabled workers to access peer support or networking groups
- Insecure employment (such as zero-hours, fixed term and other casual contracts)
- Failure to allocate funds to help with the costs of reasonable adjustments and lack of awareness of the funding sources available (e.g. the Access to Work fund).

What can trade union reps do?

Attend the training for union reps

Reps can attend the new Wales TUC accredited 2-day course on Disability and 'Hidden' Impairments in the Workplace. The training will be available across Wales. The training will cover the social model of disability, unconscious bias, legal rights, best practice in policies, mapping and monitoring, disclosure, appropriate language, and good practice in reasonable adjustments and challenging discrimination.

Start a workplace campaign

Union reps can kick-start workplace campaigns. Actions could include consulting with disabled members and carrying out workplace surveys or mapping to identify issues affecting disability members. Reps can raise disability issues identified at branch meetings and meetings with employers. Other useful activities could include lunchtime awareness raising sessions about disability issues (for example with a speaker from disabled people's organisation) or providing leaflets and signposting.

Negotiate workplace policies and press for effective implementation

In consultation with disabled members, union reps can negotiate new policies or review and renegotiate any existing ones which impact on disabled workers. It will also be important to press the employer to train managers adequately to ensure that policies are implemented properly and that managers have a clear understanding that 'invisible' disabilities are included in the legal definition of disability. Ideally policies should be based on the social model of disability with the definition of disability and the support offered going beyond the legal minimum. Union reps can use this toolkit and support and resources from their own union to highlight good practice and press employers for improvements.

Press for proper monitoring of disability equality by employers

Unions can put pressure on employers to establish proper monitoring and auditing arrangements to monitor disability equality in the workplace, check if policies are being implemented effectively and identify any issues where improvements are needed. Ensure the subject of disability equality is on the agenda during negotiations.

'Nothing about us without us' – encourage greater involvement of disabled workers within the union

Many trade unions have structures for disabled members. If your union does it may be useful to encourage and welcome the involvement of disabled members in to those structures and to encourage more disabled members to become active as reps.

Ensure that your union's own events, such as workplace meetings, communications and resources are inclusive and accessible for all disabled people (including those with 'hidden' impairments).



What can employers do?

Clear and properly implemented policies that support disability equality, developed in consultation with unions

Workplace policies impacting on disabled workers should always be developed in consultation with unions and disabled workers to ensure they are fit for purpose. Existing policies should be regularly reviewed and amended in consultation with unions in the same way. Policies should make it clear that 'invisible' impairments are covered within the definition of disability.

Measures should be in place to ensure accountability so that all relevant policies are effectively implemented and monitored in practice.

Collect data about disability in the workplace to monitor disability equality

Data can be collected anonymously through staff surveys and other methods to help identify problem areas or areas where more support or training is needed to tackle discrimination. Monitoring information could look at issues such as how many disabled people are employed, the disability pay gap, job satisfaction, engagement and progression, management attitudes and support, issues around disclosure, colleague attitudes and support, experiences of reasonable adjustments and experiences of discrimination.

To ensure adequate engagement it is likely to be important to properly explain the purpose of collecting the data and how it will be used and to provide reassurances regarding anonymity and confidentiality.

Mandatory disability equality training for all managers staff

It is vital that regular disability equality training, run by disabled people and based on the social model of disability is provided to all staff. It would be helpful if such training covered 'hidden' impairments,

unconscious bias, appropriate language and legal rights. Providing additional specific training, such as deaf awareness, autism awareness and mental health awareness training to all staff is also helpful in raising awareness and combatting stigma and exclusion.

Managers may need additional training on workplace policies and the Equality Act to ensure policies are properly understood and implemented correctly. Managers may also benefit from training on how to have supportive conversations with disabled workers (for example around discussing sensitive issues, disclosure and reasonable adjustments).

Awareness raising campaigns

Employers should use all available communication channels to provide information to all workers about the support available and the availability of reasonable adjustments for disabled workers (including those with invisible impairments).

Employers can also work with disabled workers to develop awareness campaigns on disability equality in the workplace, including 'hidden' impairments. This could include leaflets, online resources, talks, lunchtime events, opportunities for disabled people in senior roles to share their experiences or to listen to speakers from disabled people's organisations. Taking proactive measures to raise awareness and challenge stereotypes can help create a more positive, open and disability friendly workplace culture.

Action to eliminate discrimination and harassment of disabled workers

Employers should take steps to encourage and support workers in the reporting of incidents and problems - establishing an alternative point of contact or support may be helpful in circumstances where someone may not wish to speak to their manager (an alternative point of contact could be through an employee assistance service or HR). Line managers and colleagues should be encouraged to challenge negative behaviour and comments

Offer paid disability leave, carers' leave and flexible working practices



and to support disabled workers in the reporting of incidents of harassment so that appropriate action can be taken.

Improve access to support for disabled people within the workplace, including peer support groups and mentoring schemes

Mentoring schemes and peer support groups (including the involvement of senior staff) have been shown to be some of the most effective ways of improving career progression for disabled workers. Highlighting senior disabled people within the organisation who are willing to act as role models may also be helpful in combatting stereotypes and creating a more positive and 'disability friendly' workplace culture.

Offer paid disability leave, carers' leave and flexible working practices (such as adjustments to hours and home working)

Flexible working practices can benefit many groups of workers and can be particularly useful to disabled workers and those with caring responsibilities. Flexible working is one of the most common

reasonable adjustments requested by disabled workers. Operated alongside disability leave and carers' leave policies, flexible working policies can offer additional flexibility that can enable people to manage their time and work more effectively. Knowing that the option of having flexible arrangements is available may provide reassurance to workers with disabilities and caring responsibilities and prevent many issues arising in the first place.

Decent jobs – permanent, secure contracts with decent hours and pay

Offering permanent, secure contracts with decent hours and pay is better for workers' health and wellbeing and is more likely to give disabled workers the confidence to disclose their impairment and ask for any adjustments needed.



Case study – Lynda Carter is an Equalities Rep for the shop workers' union, Usdaw.



Lynda has negotiated a number of reasonable adjustments and carried out awareness raising activities in her store. This has not only helped her members but also the wider community in her home town in North Wales.

“I found that the accessible staff toilet in my store was being used for storage. When I raised it with management and asked them to clear it, they couldn't understand and said, ‘But we don't have any disabled staff here!’. I think they had the idea that the only wheelchair users would need to use it. I explained that there were colleagues in the store with ‘hidden’ disabilities who might need an accessible toilet. Once this was explained, management understood and the toilet was cleared of boxes so it could be used.

“Problems can arise because of a lack of awareness – for example, one member had a reasonable adjustment in place because of a ‘hidden’ impairment, fibromyalgia. Working on the tills worsened the pain she experienced, so we'd had an adjustment put in place that she could work on the self-service tills instead, as this is not as physically demanding. But when a new manager came in to the store, at first he didn't understand the principle of ‘reasonable adjustments’. He thought he could just put her back on the tills.

“I had to intervene and explain the principle of reasonable adjustments. I also explained about the Equality Act and the social model of disability. I told him why disabled people have a right to reasonable adjustments - to give them an equal chance. I found that when I

explained it to him, the manager was willing to listen and took it on board.

“A few years ago, I noticed that a member in my store who has a profound hearing impairment was always going out to his car at lunchtime. He was eating lunch on his own in his car instead of sitting with others in the canteen. I realised that because other staff couldn't sign they weren't able to communicate with him. Although it was unintentional, he was being treated as if he was invisible and was being excluded because of the barriers in communication.

“I got in touch with my union and managed to get funding through the union learning fund to organise for basic British Sign Language (BSL) training for colleagues. Now we can chat with our Deaf colleague - he sits with us at lunch and we all sign and have a laugh together. He is properly included as part of the team. Now that so many of the staff can sign, word has spread in the local community and more Deaf people are coming into the shop. They like the fact that we can sign and they can have a chat with us when they come in. It's helped develop better relationships in the community.

“I think it's really important to keep your eye out and be proactive as a rep. That way you can raise awareness and make sure that disabled members are treated fairly. It can nip a lot of issues in the bud before problems develop and help avoid unnecessary stress.”



Addressing barriers at work: good practice

Recruitment

Unions can help make a positive difference to reducing the continuing exclusion of disabled people from the workplace by urging employers to review their policies and procedures on recruitment. Disabled people are more than twice as likely to be out of work non-disabled people, and the rate of exclusion is even higher for those with impairments such as autism, mental health problems and learning difficulties.

A number of disabled respondents to our survey reported barriers getting in to the workplace and said they would welcome trade union support in tackling these. Union reps can have a key role in identifying potential areas of discrimination and barriers at the recruitment stage which may be contributing to the disability employment gap within individual workplaces.

It is unlawful for employers to discriminate against someone because of their disability in recruitment. The Equality Act specifically prohibits employers from asking questions about health or disability at the recruitment stage (except in a limited number of very specific circumstances).

In general, employers should not ask about health or disability until after they have decided on making a job offer. Any equal opportunities monitoring at the application stage should be separated from the candidate's application and not shared with anyone involved in decision making during the appointment process. Employers can ask candidates if they require adjustments for the application/interview process and can ask about disability for the purpose of establishing eligibility for positive action schemes (see below). But in all cases employers should make the purpose of asking any such questions, and the way the information will be used, clear.

If employers allow themselves to be influenced by preconceptions or prejudices about what people with particular impairments cannot do, they may well break the law. Employers should be reminded that it is not discrimination if a disabled person is treated more favourably than a non-disabled person if this is required to remove a barrier arising from the disability.

Positive action

The law allows positive action when disabled people are under-represented in the workforce. Employers should be pressed to do an audit of their workforce to identify the proportion of workers identifying as disabled – if disabled workers are under-represented then it means that the employer can take certain types of 'positive action'. This can be things such as offering a guaranteed interview to disabled candidates who meet the minimum criteria for a job or offering designated traineeships or work placement schemes for disabled people.

Disability Confident scheme

Disability Confident is a UK government scheme which is run through the Department for Work and Pensions. It replaced the previous 'Two Ticks' scheme. The scheme encourages employers to undertake positive action (such as a guaranteed interview for candidates who meet the minimum criteria, traineeships and work placements) and make positive commitments around improving accessibility and support for existing disabled workers (although it should be noted that carrying out the latter is already a legal requirement under the Equality Act).

There are three levels to the scheme, with it being possible for the employer to gain the first two levels by self-assessment, after which they can receive a certificate and display a logo on their website. Only the third and highest level of the scheme

involves external assessment and validation. There have been some concerns about the robustness and effectiveness of the scheme and it has been criticised by people in the disability movement because it is possible for an employer to reach level 3 without actually employing any disabled people.

The 'business case' for employing disabled people

Public sector bodies have a legal obligation to encourage the employment of disabled people. Some private sector employers are also proactive, but those that are not sometimes need to be convinced of the 'business case'.

Employers should support disabled workers and welcome better representation of disabled people within their workforce because it is the right thing to do. However, in some cases it can be helpful to make a 'business case' argument to some employers, highlighting the advantages of employing more disabled workers.

The arguments stressed by organisations such as the Business Disability Forum are:

→ Disabled people are not less productive or reliable than non-disabled people.

→ Disabled people often stay longer with an employer (are more loyal) and – contrary to popular misconceptions – have less time off.

→ Disabled people and their families constitute a significant potential market and employing them may help target this potential audience.

→ Having an effective diversity policy is good for staff morale as well as for the reputation of the organization.

→ Many employers report benefits in terms of increased productivity and creativity as a result of employing more disabled people.

→ Increasingly, procurement contracts contain diversity clauses expecting employers to demonstrate the measures they take to employ disabled people. Good equality and diversity practices boost the chances of securing large contracts.

Union reps are best placed to judge whether such arguments will carry weight with their employer. Employers can be encouraged to grasp the benefits of employing disabled people but may also need to be reminded of the cost of breaking the law.



Recruitment policies and procedures – a rep’s checklist

When reviewing an employer’s recruitment policies and procedures, union reps may find it helpful to consider the following:

- ☑ Has the employer carried out monitoring to identify if disabled people are under-represented in the organisation as a whole, and is this information broken down by job role/grade?
- ☑ Are jobs at all levels advertised as being available flexibly with options such as part-time, job share, flexible hours? If not, why not?
- ☑ Does the employer comply with the law in terms of the use of pre-employment questions about health and disability?
- ☑ Is the organisation’s website and the application process fully accessible to disabled people such as those with visual impairments, d/Deaf people or people with dyslexia?
- ☑ Does the organisation’s website and any recruitment material make it clear that the organisation welcomes disabled applicants and that it values disabled staff? It may be helpful if this is more than a statement or reference to policies but is supported by evidence of good practice such as case studies or testimonials. Belonging to a respected and robust disability equality accreditation scheme that has credibility among disabled people may also help.
- ☑ Does the organisation’s website and recruitment material make it clear that adjustments are available both at the interview stage and after appointment, and emphasise the smoothness of the process? Again, it may be helpful if case studies or examples of good practice are provided.
- ☑ Are decision makers in the recruitment process suitably trained? For example, has the employer provided training on disability equality and issues such as ‘unconscious bias’?
- ☑ Does the employer make efforts to ensure that those involved in shortlisting and the interview process are diverse and representative of different protected characteristics as a group?
- ☑ Does the selection criteria recognise and value diversity of experience? Given the barriers that some disabled people have faced in education and the workplace, some disabled people may not have as ‘conventional’ an educational or job history as other applicants but may have equally valuable experience gained elsewhere. For this reason, it may be helpful if the selection process recognises the value of experience gained in other areas of life such as volunteering or personal interests.
- ☑ Does the employer have checks and balances in place to ensure that selection criteria are proportionate and appropriate for the role, and do not include any unnecessary criteria which may indirectly discriminate against disabled people? For example, this could be checks to avoid things such as requiring job applicants to have a driving licence or insisting on a much higher level of literacy/numeracy skills when neither is necessary for the job role.

Where disabled people are under-represented in the workforce:

- ☑ Does the employer offer a guaranteed interview scheme for disabled candidates who meet the minimum criteria?
- ☑ Does the employer offer work placement schemes for disabled workers and are the workers on these schemes paid appropriately, trained and supported effectively and offered genuine opportunities to progress into permanent roles?
- ☑ Does the employer monitor the effectiveness of such schemes: i.e. how many disabled people actually get employed as a result?

Talking about disability

Around 40 per cent of disabled people who responded to our survey said that they did not feel comfortable talking openly about disability in the workplace and 1 in 3 said that disability had been an 'awkward' topic. This can be a major barrier to disclosure and access to reasonable adjustments. Of those who said they were comfortable talking openly about disability at work, a supportive line manager was seen as key.

Encouraging positive conversations about disability at work – a rep's checklist:

There are a number of steps that unions can press employers to take to help create a more positive atmosphere and improve conversations about disability at work:

- Does the employer provide regular, mandatory disability equality training for all managers and staff so there is a basic level of understanding of the issues, including understanding of the social model of disability and 'hidden' impairments?
- Do they offer resources and mandatory training to managers on how to have supportive and positive conversations about disability? (This should cover things such as supporting disabled workers with disclosure, involving them in discussions about reasonable adjustments and putting the emphasis on getting the right support in place rather than 'proving' disability).
- Does the employer have a 'zero-tolerance' tolerance policy towards harassment with clear reporting mechanisms and provide mandatory training for line managers on how to challenge negative comments and behaviour towards disabled people in the workplace?
- Does the employer use different methods of communication to inform all workers that support and adjustments are available for disabled workers?
- Do they carry out wider awareness raising activities about disability?
- Does the employer provide opportunities for peer support such as staff networks or mentoring schemes? It can be helpful if senior staff with disabilities are willing to be involved in these.

There are some links to useful resources on page 68 of this toolkit which may be helpful for workplace awareness raising activities.

Language that presents disabled people as victims or as somehow ‘pitiabile’ or ‘tragic’ can also reinforce negative assumptions and stereotypes of disabled people as ‘less capable’.

Using appropriate language

Language is powerful. It can influence the way we think about things in ways that we are not always aware of. If used without care, it can reinforce negative stereotypes but it can also be used to help challenge them. Nowhere is this clearer than in the language we use to talk about disability.

Using the right language about disability is important, because using terms that have negative connotations or that could insult or demean disabled people (even unintentionally) can lead to the reinforcement of unhelpful stereotypes and give disabled people the impression that others do not understand or empathise with them. The wrong language can also cause offence or distress and can lead disabled people to feel mocked, patronised or excluded.

Using appropriate, neutral and natural language that isn’t loaded with negative connotations can make a huge difference to the way people think about disability and can help to create more positive attitudes towards disability in the workplace.

‘Disabled people’

The Wales TUC uses the term ‘disabled people’. This follows most of the British disability movement. In the USA, the term ‘people with disabilities’ is more common, and some British disabled people follow this American usage. The Wales TUC does not regard ‘people with disabilities’ as offensive.

In line with this, all the following are acceptable:

- disabled people (workers, members etc.)
- people (workers, members etc.) with disabilities

Words and phrases to avoid

Terms such as ‘the disabled’ and ‘the autistic’ that tend to define people purely by their disability or impairment can be de-humanising and can pigeon-hole or ‘label’ people. Descriptions such as ‘he’s an epileptic’ or ‘she’s an arthritic’ can do the same.

Phrases such as ‘disabled people’, ‘autistic people’, ‘people with epilepsy’ or ‘she has arthritis’ are better because they emphasise the fact that disabled people are people first and foremost and are not a single, homogenous group defined solely by their disability or impairment.

Disabled people as ‘sufferers’

Language that presents disabled people as victims or as somehow ‘pitiabile’ or ‘tragic’ can also reinforce negative assumptions and stereotypes of disabled people as ‘less capable’.

For example, referring to someone as ‘suffering’ from autism may be patronising and offensive as it overlooks the fact that many autistic people see their condition as representing a positive difference (i.e. being neurodiverse) rather than a burden that they ‘suffer’ (although the barriers put up by society can cause them to experience difficulties and disadvantage).

Phrases such as ‘crippled by’ or ‘afflicted with’ should also be avoided. Although some disabled people with certain impairments may experience pain, distress or discomfort this can vary greatly between different individuals, and is not the case for every impairment, so it is important not to make assumptions. Talking about people’s impairments in terms that are overly emotive, negative or intrusive is unlikely to be helpful or necessary and may cause offence.

Offensive terms

Words such as ‘retarded’, ‘subnormal’, ‘defective’ and ‘handicapped’ are unacceptable. These words encourage people to think less of disabled people, and some of them are used to convey hate or contempt.

Alternative terminology

Phrases like ‘differently able’ and ‘physically challenged’ sound contrived and can be patronising or sarcastic. They are not recommended by the British disability movement.

Supporting members with disclosure

Many disabled people choose not to tell their employer about their impairment. This can be particularly true in the case of 'hidden' impairments. Common reasons for non-disclosure can include:

Acquired impairments, lack of awareness and stigma

Most disabled people are not born with their impairments but acquire them later in life. In fact, over 80 per cent of disabled people acquire their impairments during the course of their working life. Due to lack of awareness, many people with acquired impairments may be unaware that their impairment meets the legal definition of a disability and that they are entitled to protection from discrimination and to reasonable adjustments. Often when people acquire impairments later on, they have already been exposed to stereotypes and stigma about disability. As a result, they may refuse to recognise themselves as a disabled person.

Sometimes people have life-long impairments but awareness of the impairment has only recently improved to a stage where it has become properly recognised. For example, many older adults are now being diagnosed with conditions such as autism, ADHD, dyspraxia and dyslexia. After a lifetime of coming up against barriers this recognition can often come as a relief, but at the same time there may be concern about how disclosure will be received in the workplace. People may worry it will change the way others perceive them or that they'll be 'labelled' or seen as less capable. Sometimes, the high level of stigma associated with certain 'hidden' impairments (such as mental health problems) can be a very powerful obstacle to disclosure. Individuals may fear that they will lose their job and have great difficulty getting another.

→ **Unions can help by raising awareness and challenging stigma.**

Bad past experiences or current unsupportive management or workplace culture

When workers with 'hidden' impairments do disclose

to their employer, they find this is often not a one-off process and that they are expected to 'prove' they meet the legal definition of disability repeatedly. This can sometimes be a very intrusive and stressful process which is repeated whenever new managers are involved. Bad experiences like this may make some disabled workers reluctant to disclose again in future.

Where workplace cultures are unsupportive it is very unlikely that disabled workers will be confident to disclose. What creates an unsupportive culture can be things such as a lack of awareness of disability issues, lack of positive emphasis on inclusion and diversity or examples of discrimination including harassment against disabled workers. This is especially true where requests for reasonable adjustments are treated as a 'problem' and/or reasonable adjustments are not implemented properly. The perceived attitudes of line managers and senior management can be very important in this respect, but disabled workers may also be influenced by the attitudes of colleagues.

→ **A trade union rep can offer confidential advice and support and can help to challenge discrimination. Often if people are experiencing difficulties or discrimination from managers or colleagues, they may feel more comfortable confiding in a union rep.**

Insecure contracts

Although entitled to the same protection from discrimination on the grounds of disability, where workers are from an agency or are on fixed term or zero-hours contracts they may feel particularly vulnerable and may be even less likely to disclose.

→ **Unions can campaign and press employers to put all staff on to permanent and secure contracts.**

These are just some of the factors and experiences that can deter many disabled workers from disclosing their condition to their employer and seeking adjustments.

A positive approach to disability by both the union and the employer is to foster an atmosphere of openness.

Disabled workers are not obliged to disclose an impairment to their employer, but failure to do so means they may be unable to access reasonable adjustments and their full legal entitlement to protection against discrimination. When individuals are deterred from asserting their rights, they sometimes also attempt to conceal the effects of their impairment in order to 'fit in'. In some cases, this can have very serious consequences for their health and their ability to maintain employment.

A positive approach to disability by both the union and the employer is to foster an atmosphere of openness. This is more likely to encourage disabled workers to disclose and access reasonable adjustments. Holding awareness raising sessions, emphasising that reasonable adjustments are available and having an active peer support group (especially where senior disabled staff are involved) can help to break down stigma and give disabled workers more confidence that disclosure is likely to result in a positive outcome.

The best way for employers to encourage disclosure is to have good practice in terms of disability equality in the first place, with good policies (developed in consultation with unions and disabled workers) and managers who are properly trained to implement them effectively and in a supportive manner. Having the right policies and support in place means many issues can be dealt with collectively (for example, such as making flexible working options available widely to the workforce or having a separate disability-related sick leave policy) and may help to prevent some problems arising for disabled workers in the first place.

Where this is not the situation, it will be all the more important that the union uses all avenues to assure members that it understands the issues so that members feel confident to approach the union for support.

Supporting members with disclosure– a checklist for union reps:

For all the reasons outlined above, it is important that reps reassure and support members effectively by:

- ☑ **Making it clear that they believe and support the member.** It may be very difficult for the member to talk about their impairment and it may be the first time they've spoken to anyone at work about it, so it's important that the first reaction is one of understanding and support.
- ☑ **Having a good level of understanding of the Equality Act and any workplace policies covering disability.** This will help reps to feel more confident in advising members and understanding whether the member is covered by the legal protections of the Equality Act. It will be helpful if workplace policies make it clear that workers can bring their union rep with them to discussions with managers about disclosure if they wish.
- ☑ **Listening to the member and understanding what adjustments could help.** There is no one-size-fits all approach to adjustments, and the disabled member will have the best idea about the adjustments they might need.
- ☑ **Gathering evidence if required.** If the employer is reluctant to accept that the member meets the definition of disability or that an adjustment that has been requested is 'reasonable', it may be necessary gather supporting evidence such as medical evidence to help make the case.

Reasonable Adjustments

Under the Equality Act, an employer must make 'reasonable adjustments' for disabled workers where they would be at a 'substantial disadvantage' compared to a non-disabled colleague. Under the Act a 'substantial disadvantage' is one which is more than minor or trivial.

The requirement to make reasonable adjustments covers 'provisions, criteria and practices' – this usually includes workplace policies, rules, practices and arrangements and it doesn't matter whether or not they are written down. It also covers "physical features" and the "provision of auxiliary aids".

The EHRC Statutory Code of Practice states:

"The duty to make reasonable adjustments is a cornerstone of the Act and requires employers to take positive steps to ensure that disabled people can access and progress in employment. This goes beyond simply avoiding treating disabled workers, job applicants and potential job applicants unfavourably and means taking additional steps to which non-disabled workers and applicants are not entitled."

What is 'reasonable'?

The duty to make reasonable adjustments applies to all employers (regardless of size) but the question of what is considered 'reasonable' depends on the circumstances of the employer. Whenever the word 'reasonable' is used in a legal context, the implication is that an employer can justify doing or not doing something because they did not believe it was reasonable. There is no set formula, but under the Act, the criteria that would ultimately be used to evaluate 'reasonableness' at an employment tribunal includes:

- How effective the adjustment is at removing the disadvantage

- How practical the proposed adjustment is to implement
- The cost of the proposed adjustment
- The financial and other resources of the employer
- Nature and size of the employer
- The availability of financial assistance (e.g. the Access to Work fund)

The EHRC Code of Practice says:

"Effective and practicable adjustments for disabled workers often involve little or no cost or disruption and are therefore very likely to be reasonable for an employer to have to make. Even if an adjustment has a significant cost associated with it, it may still be cost-effective in overall terms – for example, compared with the costs of recruiting and training a new member of staff – and so may still be a reasonable adjustment to have to make."

Employers should focus on providing adjustments, not on 'proving' disability

The EHRC Code of Practice emphasises that to avoid discrimination, employers should not attempt to make a "fine judgment" as to whether an individual meets the legal definition of disability, but to "focus instead on meeting the needs of each worker and job applicant."

Unfortunately, problems can and do arise as a result of employers ignoring this good practice and it seems particularly so in cases of 'hidden' impairments. Our survey found that a number of workers with 'hidden' impairments had been



Research has found that non-physical adjustments, such as modified or reduced working hours, are some of the commonest 'enablers' for disabled people.

required to meet a seemingly higher standard of 'proof' or were subject to reactions of disbelief and intrusive investigations.

One disabled worker who responded to our survey described their experience:

"They constantly questioned me and even rang the hospital and my home address when I was having procedures. I was forced into coming into work when I was not well enough to do so. Threatened with redeployment and a drop in pay if I could not come to work (without reasonable adjustments having been looked at), humiliated and my daily diet (which has no bearing on my condition) and private life scrutinised. My medical records were accessed so many times the employer's occupational health department intervened on the last occasion and refused as it was so intrusive."

The duty to make adjustments includes non-physical adjustments

The duty to make reasonable adjustments includes both physical adjustments (such as installing ramps for wheelchair users) and non-physical adjustments. Unfortunately, respondents to our survey reported that there were often particular problems getting non-physical adjustments. Yet research has found that non-physical adjustments, such as modified or reduced working hours, are some of the commonest 'enablers' for disabled people.

Examples of common non-physical reasonable adjustments include:

- altering working hours
- changing the place of work or allowing the worker to work from home
- changes in duties
- transferring to a new role



- allowing paid time off for rehabilitation, treatment or assessment
- relaxing of triggers in sickness absence policies and counting disability-related sickness absence separately from sickness absence
- reducing or altering performance targets
- facilitating different methods of communication or ways of working
- providing training (including for the disabled worker's colleagues)
- adapting instructions or procedures
- modifying tests or assessments
- adjusting redundancy selection criteria
- modifying performance-related pay arrangements
- employing a support worker, reader or interpreter
- modifying grievance or disciplinary procedures



Failure to make a reasonable adjustment

Discrimination against disabled workers occurs where an employer fails to comply with their duty to make reasonable adjustments. This is known as **failure to make a reasonable adjustment**, a specific type of discrimination under the Equality Act.

Our survey found that although most workplaces did offer reasonable adjustments 'on paper', there were still widespread problems in practice. In some cases, respondents reported that there was a flat-out refusal to consider an adjustment (sometimes disabled workers requests were simply ignored, or the employer refused to recognise the person as disabled or that the adjustment requested was 'reasonable').

In other cases, even straightforward requests were subject to long delays (sometimes lasting years), adjustments were promised but never fully delivered or entirely inappropriate and ineffective alternative adjustments were provided instead. Sometimes disabled workers were not even consulted about what adjustments might be effective.

In every case it is vital that the employer consults the disabled worker about the adjustments – the disabled person will know best what is most likely to be effective for them. Even when workers have the same impairment, the type of adjustments they

require may be completely different so a one-size fits all approach is not appropriate.

Tackling a failure to make a reasonable adjustment

Where the employer is being obstructive or refusing to make reasonable adjustments, it may be necessary to gather medical evidence to support the member's case. It may also be helpful to remind employers of the guidance contained in the EHRC's Statutory Code of Practice.

Reps should be aware of the strict time limits (of three months less one day) that apply to submitting discrimination claims to an employment tribunal and should seek advice from a full time official as soon as possible. If it is not possible to resolve the matter informally, the next step is normally to use the grievance procedure.

Access to Work funding

Many adjustments don't cost anything, but sometimes costs can be involved. The Access to Work fund (administered by the Department for Work and Pensions) can provide help towards the cost of making reasonable adjustments in some circumstances. More information is available at www.gov.uk/access-to-work



Negotiation tips

Employers should be keen to ensure their reasonable adjustment process is effective and supportive because it is the right thing to do and because they value disabled workers and want to treat them fairly. However, where this is not the position union reps will be best placed to judge whether it may be helpful to make a 'business case' in negotiations. If so, the following arguments may be helpful:

- Many organisations report improved productivity, reduced sickness absence and reduced overall costs when the quality of their reasonable adjustment process is improved.
- It is often more cost and time effective for employers to operate on the basis of focusing on support and adjustments rather than 'proving' disability. Even where workers do not strictly meet the legal definition of disability, the employer will often still be obliged to make certain adjustments under health and safety legislation, because they also have a legal duty to protect workers' occupational health and safety. This will also be true in cases where workers require temporary workplace adjustments after returning to work following shorter-term illnesses, injuries and operations.
- The potential reputational damage and financial penalties to the organisation may be significant if it is found to be breaking the law by failing to provide a reasonable adjustment.

Reasonable adjustments – rep’s checklist:

Union reps can review employers’ policies and practices on providing reasonable adjustments. As part of this process it may be helpful to consider the following areas and press for improvements:

- ☑ Does the employer focus on providing the support and adjustments needed by the disabled worker (social model), rather than seeking to obtain evidence to ‘prove’ the worker is disabled ‘enough’ to meet the legal definition of disability (medical model)?
- ☑ Is the employer’s assessment process based on trusting disabled workers’ own expertise to identify what adjustments might help them and are disabled workers properly involved and consulted throughout the process?
- ☑ Does the employer have a named lead responsible for ensuring the effective delivery of reasonable adjustments within the organisation?
- ☑ Does the employer train line managers on disability equality, on its workplace disability policies and how to have positive and supportive discussions about reasonable adjustments?
- ☑ Does the employer provide the disabled worker with written confirmation of any adjustments that have been agreed and offer an ‘adjustment passport’ scheme to help with a smooth transition if new managers come in? An example ‘adjustment passport’ can be found here www.tuc.org.uk/exampledisabilityadjustmentpassport
- ☑ Does the employer have a clear ‘beginning to end’ process for reasonable adjustments to ensure all parties are clear of the process and that actions are taken in a timely manner at each stage?
- ☑ Does the employer allocate a central, dedicated fund to provide funding for reasonable adjustments throughout all areas of the organisation?
- ☑ Is the employer aware of funding available from sources such as the Access to Work fund and any other available sources?
- ☑ Does the employer regularly review and monitor the implementation and effectiveness of reasonable adjustments with the worker, so that changes or additional adjustments can be made if needed?
- ☑ Does the employer already have policies such as paid disability leave, paid carers’ leave and flexible working options available? Having such policies already in place as standard is good practice and may prevent many issues from arising in the first place.



Case study – Julie Haycraft, Usdaw rep

“A member in my store who has a learning disability had made some mistakes with money and was potentially facing disciplinary action because of this. I talked to the member and his family to get a better understanding of the kinds of support he needed at work. **Because the union got involved we got the right outcome; the member is being given more training, one-to-one mentoring and his hours on the till are being reduced as there are other roles he**

can carry out to fulfill his contract. The member sometimes got confused when having to deal with multiple tasks at the till – lottery, paypoint, vouchers.

“**Sometimes members are reluctant to say they are struggling but the union has a crucial role to play in helping members feel able to be open about needing extra support in the form of reasonable adjustments.**”



Pay, performance, training and progression

Performance-related pay and bonuses

Where pay is related to productivity and where bonuses are paid on the same basis, a disabled worker whose impairment requires them to take time off work, or to work more slowly than their non-disabled colleagues, can lose out. If this happens, the employer may be breaching equality law by failing to make a reasonable adjustment.

It may be necessary to investigate whether an adjustment could be made (for example, to equipment or processes) that would remedy the productivity gap, or failing that, the disabled person continues to be paid the same average pay as their colleagues where there is a clear link between the drop in productivity and the worker's impairment.

Performance management and capability procedures

Performance management systems can also be discriminatory if they do not take a disabled worker's impairment into account and when reasonable adjustments have not been provided. If the worker's impairment means that even with adjustments in place they are unable to fully meet targets, then a relaxation of the targets themselves may also be an appropriate reasonable adjustment (for example, in cases where the worker's impairment has required them to take time off work or affected their concentration).

In the same way, an employer who takes action under capability procedures against a disabled worker without considering the impact of their impairment may also be breaching the law. In such cases, all avenues of possible reasonable adjustments should be considered (including options such as providing training or transferring the disabled worker to a different role). An employer who tries to dismiss a disabled worker using capability procedures without providing reasonable adjustments to address disadvantage linked to their impairment risks a finding of discrimination.

Training opportunities

The duty to provide reasonable adjustments also applies to training opportunities that employers provide. Consultation should take place in advance so consideration can be given from the outset at the planning stage to ensure that reasonable adjustments can be made in good time and that the training is offered in a way that is inclusive. For example, it might be necessary to plan training to take place at non-standard times that enable the inclusion of disabled workers who need to work part-time or non-standard hours.

Promotion and progression

Being able to access training opportunities and achieving a good score under performance management systems are two areas that are often strongly linked to promotion opportunities. This means that if disabled workers are being discriminated against in these processes, it is likely their opportunities for promotion and progression will be unfairly limited. In some cases, prejudice and unconscious bias on the part of the person making assessments or appointment decisions can also result in discrimination against disabled workers.

Organisations with a lead person responsible for retaining disabled workers have been found to be among the best in ensuring good practice with career progression for disabled workers. The availability of flexible working options for more senior roles is also important. Flexible working is one of the commonest reasonable adjustments required by disabled workers so a lack of flexible working options at more senior levels within an organisation can be a barrier for disabled workers looking to progress.

Pay, performance, training and progression – a checklist for union reps

Union reps may find it helpful to consider the following when reviewing employer's policies and practice in these areas:

- Does the employer monitor differences in performance related pay and the performance management scores of disabled workers compared to non-disabled workers to see whether a disproportionate number of disabled workers are receiving lower pay or lower scores?
- Does the employer monitor whether disabled workers are disproportionately over-represented in actions taken under the capability procedure?
- Does the employer have a good quality system for providing reasonable adjustments and are all options regarding reasonable adjustments (including adjustments to procedures themselves) considered so that disabled workers are not unfairly penalised by performance-related pay, performance management or capability procedures?
- Does the employer train managers who are responsible for implementing these procedures in disability equality and does the organisation take any steps to reduce the impact of unconscious bias on the part of decision makers?
- Does the employer monitor whether disabled workers access work-based training opportunities at a comparable rate to non-disabled staff?
- Does the employer consult with staff on any reasonable adjustments that may be required to enable access training opportunities and do they ensure that considerations regarding accessibility are built into the planning stage?
- Does the employer monitor how many disabled candidates apply for promotion, how many of these are successful and whether disabled workers are more under-represented at higher grades?
- Does the employer have a lead person responsible for retaining disabled workers?
- Does the employer offer any positive action schemes (such as guaranteed interview schemes, traineeships or work placements) to try to increase the number of disabled workers in senior roles (where disabled workers are under-represented at these grades)?
- Does the employer provide opportunities for peer support or mentoring schemes for disabled workers?

Case study – disabled member with epilepsy

"There was a period when the drugs caused side effects which impacted on my short to medium term memory.. my duties were compromised and my performance suffered ... my appraisals were pretty damning and I was denied pay increases.. the fact that the epilepsy might have been a factor was either ignored or more likely didn't occur to my line manager.

Things got worse, I received a formal warning and when I

explained about my epilepsy I was put under pressure to take retirement on medical grounds. I started to suffer from depression. I called in the union representative. I now have a different job which I do well".

(Case study from *You don't look disabled*, a TUC guide to supporting members with invisible impairments)



Sickness absence and disability

Many of those who responded to our survey reported that workplace sickness absence policies were causing particular problems for disabled workers, often being used in a way that was discriminatory by not separating disability-related sickness absence and being used as a means of 'forcing out' disabled workers.

Sickness absence and disability was also the stand-out issue in the TUC's most recent Equality Audit (2016), with 65 per cent of reps reporting that they had dealt with issues linked to disability related sickness absence in the last 2 years.

Absence management policies which include 'triggers' leading to disciplinary action are now common across the public and private sector. In some cases, even just a few days absence can lead to workers being put through disciplinary action.

Often a lack of understanding of disability discrimination law is a root cause of the problem. In many cases, a relaxation of triggers and sanctions is often entirely appropriate as a reasonable adjustment and a failure to relax triggers may in itself be regarded as a 'failure to make a reasonable adjustment'. However, many managers are not sufficiently trained or aware of the law to recognise this.

The key goal is to get employers to count absence for reasons associated with disability separately.

The EHRC Statutory Code of Practice states that disability-related sickness absence should be counted separately or that a separate disability leave policy should be in place. But bad employers often ignore this good practice and instead use sickness absence policies just to cut absence without regard to identifying and fairly addressing any underlying issues that may be behind absence, offering reasonable adjustments or a properly supported and managed return to work.

Case law as it stands in relation to the payment of sick pay and sickness absence remains unhelpful, but the legal obligation on employers to consider reasonable adjustments for disabled workers is a vital concept that can be used to underpin negotiations for changes to absence procedures. The Public Sector Equality Duty (Wales) is also a useful tool that union reps in public sector workplaces can use to press for improvements.

The key goal is to get employers to count absence for reasons associated with disability separately. Many unions have managed to negotiate separate disability leave policies, but where the employer is unwilling to agree to make these flexible enough to accommodate different impairments or to recognise different issues disabled workers make experience, issues can often still arise.



Sickness absence and disability, a checklist for union reps:

- Does the employer count absence for reasons associated with disability separately?
- Is there a disability leave policy? If so, is it sufficiently flexible to accommodate disabled workers' needs? An example of a flexible disability leave policy is available to download here www.tuc.org.uk/exampledisabilityrelatedsicknesspolicies
- Does the employer monitor disciplinary actions taken under the sickness absence policy, to see if disabled workers are disproportionately represented?
- It may be helpful to point out to employers that organisations that improve the quality of their procedures for providing reasonable adjustments report reductions in sickness absence.

For further guidance see the TUC's *Sickness Absence and Disability Discrimination: A trade union negotiator's guide to the law and good practice*.

Redundancy

To make a disabled worker redundant without having considered reasonable adjustments – including to the redundancy criteria and procedures themselves – may be unlawful. Unions will need to ensure both that the employer’s procedures are non-discriminatory and that the actual practice that follows also does not discriminate on grounds of disability.

Of course, other laws apply to redundancy situations

as well and an employer must comply with them all.

Union reps need to ensure that the criteria proposed by the employer for selecting people for redundancy take into account all appropriate possible reasonable adjustments, many of which will mean modifying the criteria being used to select for redundancy so that a disabled person does not face a ‘substantial disadvantage’ in the process.

Redundancy – checklist for union reps:

- Has the employer taken steps to ensure that disabled workers have not been directly or indirectly discriminated against in determining who is in the pool of ‘at risk’ staff? This might need further investigation, particularly if only a small group of workers has been targeted or disabled workers are disproportionately represented in the pool.
- Is the employer using a ‘matrix’ that includes a range of selection criteria, and have they consulted with the union about the criteria being used?
- If the employer proposes using absence in the selection criteria, is absence connected to disability discounted?
- If the employer proposes using length of service in the selection criteria, is care being taken to avoid discrimination arising from an individual disabled person’s disability-related employment history?
- If the employer proposes using performance in the selection criteria, have any reasonable adjustments been put in place first, including recognition (and discounting) of productivity or performance levels below those of non-disabled colleagues that are linked to the disability?
- If the employer proposes using criteria around flexible working, could this directly or indirectly discriminate against disabled workers?
- Has the employer considered options for redeployment that may be available, including providing training to enable workers to take up new roles?
- Have decision makers been trained in disability equality and how to avoid discrimination?

More detailed guidance about redundancy is available from the EHRC and in the TUC’s *Disability and Work: A trade union guide to the law and good practice*.



Health and safety

Employers' obligations under the Health and Safety at Work Act do not outweigh their obligations not to discriminate against, or make reasonable adjustments for, a disabled worker.

In some circumstances the nature of the disabled worker's impairment and the way it interacts with the workplace may mean the employer is required to do a risk assessment that is specific to the individual. But it is important to note that the law says that an employer's request to undertake a risk assessment must itself be reasonable (that is, consistent with the tasks required of the job, and not resulting from irrelevant considerations based on preconceptions of an individual's impairment).

Failure to carry out an appropriate risk assessment while deciding on actions that treat a disabled worker less favourably could be discriminatory and in such cases the employer would not be able to argue that health and safety concerns were the reason for the discrimination.

Any kind of blanket ban on all people with a particular impairment is likely to constitute direct disability discrimination, which is incapable of being justified. An example would be a ban on anyone with diabetes from a driving job. Such a policy is likely to be unlawful.

The EHRC Statutory Code of Practice states that in terms of considering health and safety when making reasonable adjustments:

“If making a particular adjustment would increase the risk to health and safety of any person (including the disabled worker in question) then this is a relevant factor in deciding whether it is reasonable to make

Stress is one of the leading causes of work-related ill health and it can have wide ranging effects on people's physical and mental health.

that adjustment. Suitable and sufficient risk assessments should be used to help determine whether such risk is likely to arise.”

The approach taken by union representatives should be that disability and health and safety work together, not in opposition,

to create a safer and healthier workplace for all. In many cases, reasonable adjustments can be made that will eliminate or, as the law itself requires, minimise the risk.

The impact of workplace stress

Stress is one of the leading causes of work-related ill health and it can have wide ranging effects on people's physical and mental health, including worsening existing conditions. Each year, over half a million workers experience stress, anxiety or depression that was either caused or made worse by work.

Disabled workers are more likely to report lower levels of workplace wellbeing compared to non-disabled workers. Common causes of workplace stress include problems such as excessive workloads, unsupportive management, unrealistic targets, changes at work and bullying and harassment. The Time to Change campaign has reported that two in three workers with mental health problems said that workplace stress either caused or exacerbated their symptoms. Some employers have tried to promote 'resilience' as the solution to workplace stress – the implication being that workers just need to 'toughen up'.

Employers have a legal duty to ensure the health and safety of their workers and to tackle the causes of stress in the workplace effectively by

removing (or where it is not possible to remove them, by minimising) the risks such as the excessive workloads, unrealistic targets, bullying and harassment or unsupportive management. Offering resilience training is not a substitute for this and employers should not blame workers or imply they need to become more 'resilient'.

Union reps can work with others in their branch (such as health and safety reps) to press employers to carry out proper stress risk assessments and address the causes of workplace stress using the HSE Stress Management Standards.

Health and safety and disability at work: checklist for union reps:

Union reps might find it helpful to work together with the trade union health and safety representatives to review the following:

- Does the employer carry out risk assessments that consider the broad differences in a diverse range of workers including potential differences based on gender, age and disability?
- Does the employer carry out individual risk assessments for disabled workers when the circumstances are appropriate?
- Does the employer carry out stress risk assessments and implement the HSE's Stress Management standards to remove or manage risks where identified?
- Does the employer have an appropriate sickness absence management policy or workplace agreement that was negotiated by the union, with disability-related sickness absence counted separately?
- Is any sickness policy non-discriminatory and applied fairly in practice, not just used to cut absence but in a way that provides an opportunity to fairly address any underlying workplace issues, identify reasonable adjustments that may be required and support a managed return to work when appropriate?
- Does the employer ensure all workers are made aware of the importance of reporting injuries, incidents, work-related ill health and health problems made worse by work, in an environment where workers will not feel victimised by reporting them?

The approach taken by union representatives should be that disability and health and safety work together to create safer and healthier workplaces for all.

Occupational health

In many circumstances that affect the lives of disabled workers, employers rely on the recommendations of an in-house occupational health service.

Although some disabled workers find occupational health services to be helpful and supportive, unions have reported situations where the occupational health service's recommendations fit too readily with the employer's pre-judged conclusions about the fitness of the worker for continued employment. Occupational health services are often directly contracted by employers and sometimes there can be concerns that they may feel pressured into siding with management over the worker in order to avoid losing contracts. Or in some cases (particularly

There may be a failure to fully recognise the impact of the worker's impairment or to recognise that reasonable adjustments could be put in place to support them to stay in work.

in the case of some 'hidden' impairments such as mental health problems) there may be a failure to fully recognise the impact of the worker's impairment or to recognise that reasonable adjustments could be put in place to support them to stay in work.

Existing case law supports the view that where the employer has relied on an OH report to justify their action, it can be hard to challenge this successfully in an employment tribunal. It is crucial then, that where the employer has decided to seek medical evidence to decide what to do with a worker whose performance has deteriorated as a result of a health condition or impairment, the union should seek to ensure two key points:

- ☑ Will the medical report be prepared by a professional qualified to deal with the particular conditions in question? This may involve, where appropriate, commissioning an external expert.
- ☑ Has the worker been involved in the discussion of what they can or cannot do at work? Case law confirms that such consultation is required, and this should be pointed out to the employer.

Given the weight that medical evidence can play in justifying an employer's decision to dismiss a sick or disabled worker, it is essential to ensure:

- ☑ Is the medical report from a properly qualified expert?
- ☑ Is the disabled worker being involved in discussions about possible reasonable adjustments to enable them to continue in or return to work?
- ☑ Have all possible avenues of reasonable adjustments been considered? If the worker is unable to return to their original role, this could include consideration of redeployment to a new role (and include training to enable them to carry out a new role) including where the redeployment opportunity is at a higher grade.

Tackling discrimination



The cause of much of the continued discrimination against disabled people in the workplace remains ignorance of the law. Our research found that even where workplaces have policies in place, managers responsible for implementing them on a day-to-day basis sometimes appear to have very little understanding of either the Equality Act or their own workplace policies to the point where they often failed to comply with even the minimum required in law.

This widespread lack of awareness, combined with the popular stereotypes of disability, which often take the form of not accepting that someone whose impairment cannot be seen can be disabled, is the root cause of many of the problems arising in the workplace.

It is not good enough for employers to have policies in place if they do not train managers appropriately or monitor implementation effectively. If employers can be persuaded to improve their practice in this regard, it would prevent many issues from arising in the first place. It may be a sign of problems if disabled workers are disproportionately represented in grievance or disciplinary cases.

In many cases, when union representatives are well equipped with the facts and the law, they are successful in negotiating reasonable adjustments and resolving problems informally. Where it is not possible to resolve issues informally, it often becomes necessary for members to raise a grievance in order to try to assert their rights.

Raising a grievance

A grievance is a formal workplace procedure which allows workers to challenge the behaviour of their colleagues and employer and to challenge decisions that are made relating to their employment.

When interviewing the member who is considering a grievance, it may be helpful to ask them to complete these two sentences:

1. *I have a grievance because...*
2. *This would be resolved if...*

In considering raising a grievance, it is important for reps to discuss the issues fully with the member and do the following:

- Clarify what the issue is that is causing the problem
- Ensure the member has a realistic goal (or goals) that will resolve the grievance
- Attempt to resolve the issue informally if this has not been done already
- Have a copy of the employer's grievance procedure and any other relevant workplace procedures (e.g. policies covering disability, reasonable adjustments or any other policies relevant to the case)
- Understand the different stages of the grievance procedure (including any appeal stage)
- Have awareness of the law and how the Equality Act offers legal protection to disabled workers
- Understand what evidence might help support the member's case and gather this
- Know when to involve a full-time official from the union



Sometimes an undisclosed disability may be the root cause of behaviour an employer is unhappy about.

Taking matters further

Union reps will be aware that it is always better to seek to resolve any issues that arise within the workplace informally or through the employer's grievance procedure where possible. In cases where it is not possible to resolve the issue in this way it is important that union reps are also aware of the strict time limits that apply to submitting a claim for discrimination, should it be necessary for the case to be taken to an employment tribunal.

The time limit is currently 3 months less one day from the act of discrimination (or the last act, if it was a linked series of acts). This time limit is paused during ACAS early conciliation (which is compulsory for most claims). ACAS must be notified of an intention to lodge a claim with an employment tribunal. Some of the most common forms of disability discrimination cases are failure to make a

reasonable adjustment and discrimination arising from a disability. In all cases, it is best for union reps to take advice from a full-time union official at an early stage to determine if the member has a discrimination case and to ensure that if it needs to be taken further, a claim is submitted in time.

Disciplinary cases

Sometimes an undisclosed disability may be the root cause of behaviour an employer is unhappy about. For example, a member who is routinely late may have an undisclosed mental health problem which causes problems with time-keeping. In other cases, the member may have requested an adjustment which the employer has failed to make and it is actually the failure to make a reasonable adjustment that has caused the issue the employer is disciplining the member for.

When dealing with disciplinary cases it is important to be aware that:

- Sometimes there may be an underlying issue linked to a disability that neither the member or you are aware of, which has led to the behaviour.
- When you interview the member, you should encourage them to be open and honest with you so that you can defend them effectively in the hearing.
- For more advice on how to encourage members to recognise if they have an impairment and encourage disclosure see the section on 'supporting members with disclosure'.
- Remember that if the member is disabled the employer may have a duty to make reasonable adjustments, including to the disciplinary process itself.

Dealing with harassment

Around one in three disabled workers responding to our survey said that disability had been treated as a 'joke' topic in their workplace, and many reported that they had experienced harassment. Harassment can also be experienced by association, for example, a family member, friend or carer may experience harassment because of their association

with a disabled person. Harassment can be an extremely distressing and isolating experience, which can affect people's mental and physical health and wellbeing. It is also often under-reported as workers may be concerned that they will not be believed, that no action will be taken or that they'll be victimised as result of making a complaint (particularly if the perpetrator is a manager or someone more senior).

To support members and tackle harassment in the workplace, it may be helpful to:

- ☑ Raise awareness of what harassment is and let members know that they don't have to put up with it and that the union can support them to make a complaint.
- ☑ Press the employer to provide clear reporting mechanisms and establish alternative points of contacts for reporting harassment (this may be particularly helpful where the perpetrator is a line manager).
- ☑ Press the employer to have an explicit zero-tolerance policy towards harassment (including third party harassment) and to deal effectively with perpetrators.
- ☑ Ensure the employer has an effective bullying and harassment or dignity at work policy, backed up by appropriate training and awareness raising activities
- ☑ Press the employer to provide additional support for those affected by harassment – for example through an employee assistance programme.



Monitoring disability equality

The different sections in this toolkit include suggestions of specific issues that it can be helpful to scrutinise as part of policy review and monitoring activities. The following guidance, reproduced from the TUC's *Disability and Work: A trade union guide to the law and good practice* provides a helpful overview of good practice in monitoring:

"How can an organisation know whether its equality policies are working without reviewing and monitoring them? Under the public sector equality duty all public bodies are obliged to place in the public domain data that will enable citizens to hold them to account for the success (or otherwise) of their equality policies. Private and voluntary sector bodies do not have this duty, but good practice means they should follow the same path.

"It will be very hard to produce such data unless the different equality groups are monitored. Many organisations have carried out disability monitoring for a number of years, and have encountered problems in obtaining reliable information from the exercises. There are some basic ground rules that need to be observed if a monitoring exercise is to be authoritative.

- ☑ Don't ask people about their impairments – not only is this information useless, it almost guarantees that people with 'hidden impairments' won't respond, especially (but not only) if they relate to mental health.
- ☑ Do have a plan. What will be done with the collected data? How will the organisation modify its operations in light of the findings?
- ☑ Do make sure that every member of staff receives a briefing explaining what the equality plans are, and that they have the chance to ask questions.
- ☑ Do make sure monitoring is anonymous and confidential. Access to data needs to be closely controlled, and no individual should be identifiable from the responses. If the data is not anonymous, then the protections afforded by the Data Protection Act (and GDPR) must be respected.

"The TUC strongly recommends that monitoring starts with a social model approach. The purpose of the exercise should be, at least, to identify whether the proportion of people identifying as disabled within the workplace is representative of society as a whole.

"Identifying what barriers people continue to face will make a survey even more useful. However, it will be difficult to merge the two into a single survey, and the TUC recommends that a separate mechanism is put in place asking people to report barriers they face, and in a different way so as to encourage the maximum response rate. For example, it may be very difficult to maintain anonymity in such a survey.

"Even with the best-planned monitoring exercise, many people are likely not to respond to a question about disability. If confidence grows that the data are being used to change the organisation for the



The TUC strongly recommends that monitoring starts with a social model approach.

better, then rates of return will increase with each repeat exercise.

“Many people who count as disabled using the Equality Act definition do not define themselves as disabled. And some people who are disabled are not covered by the Act, because of the definition. As a result, no monitoring exercise can possibly produce a fully accurate picture: however, without a monitoring exercise, there will be no benchmark against which an organisation can measure progress with its equality policies.

“Whether or not a social model approach is adopted, there will remain the question of what definition of disability is used to present the monitoring exercise. Most employers will naturally follow the definition in the Equality Act, and it may be helpful if this definition is provided with the monitoring form.

“Some organisations ask people to identify themselves against a list of impairments. This approach is wrong; not only will many people find it offensive, but it also fails to provide useful information. The employer does not need to know that this many of its employees have this many conditions – but it does need to know whether it is treating disabled workers properly, and what barriers remain to be tackled, and responses showing what impairments people have do not contribute to dealing with these questions.

“Very occasionally there might be circumstances where an organisation may use data collected from a survey based on individual impairments – such as, for example, if a large employer was concerned that there was a particular group of disabled people who were not represented in the workforce, so that they could then plan a targeted recruitment operation. But this situation will not apply in the great majority of circumstances, and other methods might produce the information more efficiently anyway.

Using the results

“If monitoring suggests a disproportionately low number of disabled workers, then the organisation is permitted by law to target recruitment efforts at this group. If the monitoring shows that disabled people figure disproportionately among lower grades, the organisation should investigate what barriers there are to career progression.

“If the survey does not allow for that kind of analysis, the union should be pressing for monitoring of internal processes such as promotions, training and development activities, and grievance and disciplinary processes in order to check whether disabled people are disproportionately absent or present. The union can offer a constructive role in presenting evidence to the employer and acting as a conduit for members’ views and experiences of the barriers that exist.

Summary

“The TUC recommends that unions encourage employers to monitor their workforce for two reasons: to check that disabled people are represented in the right proportions; and to (separately) check progress in removing the barriers they face. To achieve a useful outcome requires careful planning, briefing all managers and staff, and a commitment to act on the findings.”

Workplace disability equality policies – a trade union negotiator’s checklist and links to example policies

Workplaces often have a wide range of policies and procedures which impact on the lives of disabled workers. The different sections in the good practice guide in this toolkit contain ideas for reviewing workplace policies and pressing employers for improvements in both policy and practice in a range of areas.

Unfortunately, it is not possible to provide a one-size-fits all example of disability equality policy that covers all these areas and fits the needs of all workplaces within this toolkit, because it would be very long and there is not enough space to accommodate one here. But the checklist and links below, together with the other checklists in the good practice section should be a resource to reps wishing to carry out a wider review or to look at examples of other workplace policies.

There are also some key points reps may wish to consider as part of a wider review of disability equality policies:

- ☑ Where policies have a definition of disability based on the Equality Act, it may be helpful if it is made explicit within any policy and guidance documents that the legal definition of disability includes ‘hidden’ impairments, and to provide some examples of these.
- ☑ Likewise, it may be helpful if any examples of reasonable adjustments included within a policy or guidance documents include examples of non-physical adjustments.
- ☑ Employers should also be pressed to include an organizational commitment to following the good practice contained in the EHRC Statutory Code of Practice within policies, including an explicit reference to point 6.9 of the Code: “In order to avoid discrimination, it would be sensible for employers not to attempt to make a fine judgment as to whether a particular individual falls within the statutory definition of disability, but to focus instead on meeting the needs of each worker and job applicant.”
- ☑ Some unions have negotiated additional statements into policies which are helpful in broadening the definition of disability. One example is as follows: “Although the Equality Act has been one factor in the decision to establish this procedure, it is not necessary for an individual to fully meet the definition of disability within the Equality Act before they can be granted reasonable adjustments. For example, an individual may not be required to meet the definition of ‘long-term’ to be eligible.”
- ☑ Where employers are more progressive, it may be possible to persuade them to formally recognise the social model of disability within their workplace policies. The United Nations Convention on the Rights of Persons with Disabilities provides the following definition of disability which may be useful in providing wording for a policy: “Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”.



- ☑ A positive commitment to supporting the social model of disability which states that the employer recognises its duty to remove barriers and provide access for disabled people in the workplace and does not view disability as a barrier to employment or continuing employment may also be helpful.
- ☑ It may also be helpful if any definition of disability is qualified with a statement such as: “This organisation recognises that many people who count as disabled using the Equality Act definition (particularly those with ‘hidden’ or ‘acquired’ impairments) may not recognise or define themselves as disabled. It also recognises that some people who are disabled are not covered by the Act, because of the limitations of the definition within it. This organisation actively supports and encourages disclosure and inclusion of all people with disabilities. It is committed to supporting all disabled workers by removing barriers, tackling discrimination and implementing best employment practice.”
- ☑ Policies should include reference to training managers appropriately to implement policies, set out how the employer will monitor implementation of policies to ensure effective compliance and how they will work with unions to review and improve the progress towards disability equality within the organisation.
- ☑ If your workplace does not already have one, a key goal for union reps is to get a sufficiently flexible disability-related sick leave policy in place. An example disability related sickness policy is available to download here www.tuc.org.uk/exampledisabilityrelatedsicknesspolicies
- ☑ Many unions also report that ‘adjustment passport’ schemes are very effective at making the process of adjustments smoother, particularly when workers’ job roles or managers are changed frequently. An example of an ‘adjustment passport’ can be found here: www.tuc.org.uk/exampledisabilityadjustmentpassport
- ☑ If policies are not already in place, press employers to provide paid carers leave and flexible working options to all workers. This will help many disabled workers and those who are carers (as well as many other groups of workers).

Please see the other good practice sections within this guide for additional checklists to review different areas of policy and practice.

Tools – workplace and branch activities

Activity: The Social Model of Disability

Aims

This activity will help you:

- understand how the social model of disability works in practice
- give examples of potential barriers to participation
- suggest ways of removing barriers

Emma has recently qualified as a radiographer. She has Asperger syndrome (an autism spectrum condition).

In Emma's case, differences linked to her Asperger syndrome means that she has a strong preference for predictability and routine, and quick, unexpected or unexplained change is especially stressful for her and can cause anxiety.

The hospital where Emma works provides a very thorough 6-month induction, during which new workers get to experience lots of different departments and see how other specialisms operate. This meant that she underwent a great deal of change when she was still very new to the job and sometimes the change was quite unexpected as she was given very little or no notice – to the extent that it caused her to become quite anxious.

She also had many meetings which had to take place as part of the induction process – with managers, mentors and the occupational health department, for example – but it wasn't always made clear what the purpose or nature of the meetings were. She became especially anxious when she didn't know what these meetings were going to be about or what they were for.

Task 1

Make a list of the potential barriers.

Task 2

Discuss ways that these barriers could be removed and report back to the group.

Resources: Information about the social model of disability on pages 6 - 7 of this toolkit

Branch activity: Your union's disability and equality structures

Aims

This activity will help you:

- understand the disability equality structures of your union
- identify the delegates in your area
- identify potential delegates within your organisation

Task 1

Using your union's rule book and website, identify the disability equality structures of your union using the following list as a guide:

	Yes	No	Need to find out
Does your union hold an annual or bi-annual conference for disabled members?			
If yes, is the conference policy making?			
Is there a national committee for disabled members?			
If yes, do one or more paid officers of the union or NEC members sit on the committee?			
Does your union hold regional meetings for disabled members?			
Do all delegates to the committees/meetings above have to be disabled members?			
Are members of your local organisation/branch/workplace delegates to any of the above committees?			

Task 2

Using your contacts within the union, identify the current delegates to your disability structures.

Task 3

Think about ways that you could raise awareness of these structures and identify potential delegates within your workplace. Consider what support delegates might need from the branch in terms of ensuring their role is recognised by your employer and any training or other support needed.

Branch activity: How accessible is your branch?

Aims

This activity will help you:

- assess whether your workplace union activities are accessible to disabled workers, including workers with 'hidden' impairments
- identify any barriers
- identify ways that barriers could be removed

Task 1

Talk to other union reps in your workplace about any adjustments that have been made to make workplace union activities more accessible to disabled members and any problems or issues that have arisen. You could also contact your union's regional office and ask how it goes about meeting requests for reasonable adjustments and if they have any examples they can share. Make a list of these.

Task 2

Use sources of information available to you – this could be speaking to disabled members, disabled people's organisations and online resources (such as TUC or union guidance on specific impairments) to research some of the barriers that might be encountered by disabled people with specific impairments including 'hidden' impairments.

Consider how barriers might occur at each stage in different areas of union activity including things such as arrangements for meetings, methods of consultation and other forms of communication (such as publications and paperwork). Make a list of the potential barriers – ensure that both physical and non-physical barriers are considered.

Task 3

Discuss what the branch can do to address these barriers. Think about each step of the process including how you will let members or potential members know that adjustments are available, any changes that could help make existing activities generally more inclusive and accessible and how the branch could be better prepared to accommodate any specific requests that arise.

Draw up 5 action points for the branch to work on. These action points should be given timescales and key people to lead on each.

Branch activity: Mapping your disabled members and identifying issues

Aims

This activity will help you:

- Consider the most appropriate method of identifying your disabled members
- Plan an awareness raising campaign on disability issues

Task 1

Carry out research to gather any available information about disability in your branch/workplace. Consider:

- Does your union monitor disability among members? If so, what information or statistics are available?
- Does your employer monitor disability in the workplace? If so, what information or statistics are available?
- Using your branch records to put together a summary of all case work involving disability issues to review and identify any common themes or problems.

Discuss your findings as a group and make a list of the key points.

Task 2

Using the information gathered in task 1, discuss as a group:

- Do disabled people appear to be under-represented among the workforce or the membership in your workplace?
- Does the information gathered point to any other problems or issues?
- Do you feel the members have a good level of awareness of disability issues and understanding of who can be considered disabled?
- Does your workplace have a culture where people would feel confident in disclosing a disability?
- Do you have enough information about the situation regarding disabled people in your workplace? If not what could you do to gather the information you need? What would you need to think about?
- Do you have a forum for disabled members? If not, is this something that may be of benefit?

Discuss what action the branch could take to address these issues and make an action plan. Consider as your goal being in a position where you have accurate information about disability in your workplace and that you have an active disabled members network discussing and progressing issues.

Resources: Also see the toolkit sections: 'talking about disability', 'supporting disclosure' and 'monitoring disability equality'

Awareness raising activities – resources for reps

Some ideas of resources that could be used for awareness raising activities:

- ☑ The Wales TUC has **posters and leaflets** available that can be used by union reps to support workplace campaigns on disability equality and hidden impairments – contact wtuceducation@tuc.org.uk or tel 029 2034 7010 to request supplies of these.
- ☑ Many unions have **leaflets and other resources** on disability issues – contact your union to see what they have available.
- ☑ The research group Disability at Work has produced a **10-minute video** about disability and work called ‘Disability Talking’ which is ideal to use as part of a workplace awareness raising session or campaign. It’s available here: www.disabilityatwork.co.uk/video/
- ☑ The disability organisation Scope has a range of **short videos and talking tips** available as part of its ‘End the Awkward’ campaign www.scope.org.uk/end-the-awkward
- ☑ Researchers at Cardiff University have produced an **online quiz to help workers with an impairment or long-term illness to recognise discrimination at work** – blogs.cardiff.ac.uk/disability-and-employment/2017/09/25/disability-discrimination-quiz/
- ☑ **Unconscious bias tests** – researchers at Harvard University have developed a series of online tests (called implicit association tests) – these include a test on disability. The test allows people to find out if they have an ‘implicit attitude’ or unconscious bias that they are not aware of implicit.harvard.edu/implicit/takeatest.html
- ☑ The Business Disability Forum has lots of **resources aimed at employers** which may be helpful for raising awareness with an employer or starting discussions with managers: businessdisabilityforum.org.uk
- ☑ **Role models and myth busting** - Disability Wales recently hosted the ‘I am Embolden’ project, which celebrates D/deaf and disabled women and girls in Wales who are achieving great things in life and challenging stereotypes. Their stories will be used to create a campaign aimed at challenging myths and stereotypes about disability and showcase amazing female role models. [See www.disabilitywales.org](http://www.disabilitywales.org)
- ☑ **Lunchtime talks** – it may be helpful to invite someone from an organisation of disabled people as a guest speaker to a workplace awareness raising event.

Further information

Wales TUC and TUC resources on disability

Disability and 'Hidden' Impairments in the Workplace: a Wales TUC Cymru survey report
www.tuc.org.uk/DHIWsurveyreport

Wales TUC mental health toolkit
www.tuc.org.uk/sites/default/files/Gofal%20Wales%20TUC%20toolkit%20-%20Eng%20-%20WEB.pdf

Disability and 'Hidden' Impairments in the Workplace eNote and menopause eNote (online briefings for reps)
www.tuceducation.org.uk

"You don't look disabled": supporting members with invisible impairments
www.tuc.org.uk/sites/default/files/You%20don%27t%20look%20disabled_0.pdf

Disability and work: a trade union guide to the law and good practice
www.tuc.org.uk/sites/default/files/extras/disabilityandwork.pdf

Disabled workers: A TUC Education workbook
www.unionlearn.org.uk/publications/disability-workbook-tuc-education-workbook

Sickness absence and disability discrimination: a trade union negotiators guide to the law and good practice
www.tuc.org.uk/sites/default/files/Sickness%20absence%20%20DD%202016%20revision%20SB.pdf

TUC manifesto for disability equality
www.tuc.org.uk/sites/default/files/Manifestofordisabilityequality.pdf

Using the TUC manifesto for disability equality: a guide for trade union activists
www.tuc.org.uk/sites/default/files/DisabilityManifestoGuide.pdf

TUC Guide to Equality Law
www.tuc.org.uk/sites/default/files/tucfiles/guideequalitylaw2011.pdf

TUC Equality Audit 2016
www.tuc.org.uk/sites/default/files/Congress_2016_TUC%20Equality%20Audit_Digital.pdf

Trade unions and disabled members: why the social model matters
www.tuc.org.uk/sites/default/files/socialmodel.pdf

Autism in the workplace: a TUC guide
www.tuc.org.uk/sites/default/files/Autism.pdf

Dyslexia in the workplace: a TUC guide
www.tuc.org.uk/sites/default/files/Dyslexia_In_The_Workplace_2013_LR.pdf

Epilepsy in the workplace: a TUC guide
www.tuc.org.uk/sites/default/files/EpilepsyInTheWorkplace.pdf

Other TUC disability research and information

www.tuc.org.uk/research-analysis/equality/disability

Wales TUC menopause toolkit
wtuclearn.tuc.org.uk/resource/menopause-workplace-toolkit-trade-unionists

Other useful guides and resources

EHRC Statutory Code of Practice

www.equalityhumanrights.com/sites/default/files/employercode.pdf

ACAS Disability discrimination: key points for the workplace

www.acas.org.uk/media/pdf/s/k/Disability_discrim_keypoints_workplace_Nov.pdf

EHRC Being disabled in Britain: a journey less equal

www.equalityhumanrights.com/en/publication-download/being-disabled-britain-journey-less-equal

EHRC Employment information, pay differences and staff training and the equality duty

www.equalityhumanrights.com/sites/default/files/employment_information_pay_differences_and_staff_training_wales.pdf

Scope Let's talk: improving conversations about disability at work

www.scope.org.uk/Scope/media/Documents/Publication%20Directory/Let-s-talk-improving-conversations-about-disability-at-work-Scope.pdf

Scope Current attitudes towards disabled people

www.scope.org.uk/Scope/media/Images/Publication%20Directory/Current-attitudes-towards-disabled-people.pdf?ext=.pdf

Useful websites and contacts

ACAS

www.acas.org.uk

ADHD foundation

www.adhdfoundation.org.uk

Autism Spectrum Connections Cymru - One Stop Shop (employment advice and independent advocacy) 21 High Street Cardiff CF10 1PT – tel 02920 228 794 – info@asc-cymru.org

ASD info Wales

www.asdinfowales.co.uk

Access to Work

www.gov.uk/access-to-work

British Dyslexia Association

www.bdadyslexia.org.uk

Business Disability Forum

www.businessdisabilityforum.org.uk

Department for Work and Pensions

www.gov.uk/government/organisations/department-for-work-pensions

Disability at Work

www.disabilityatwork.co.uk

Disability Wales

www.disabilitywales.org

Dyspraxia Foundation

dyspraxiafoundation.org.uk

The Equality and Human Rights Commission (EHRC) in Wales

www.equalityhumanrights.com/en/commission-wales

Gofal

www.gofal.org.uk

Health and Safety Executive

www.hse.gov.uk

Macmillan Cancer Support

www.macmillan.org.uk

Mind Cymru

www.mind.org.uk/about-us/mind-cymru/

MS Society Wales

www.mssociety.org.uk/near-me/national-offices/ms-society-cymru

SCOPE

www.scope.org.uk

Terrence Higgins Trust

www.tht.org.uk

Time to Change Wales

www.timetochangewales.org.uk

Trade Union Disability Alliance

www.tuda-online.org

Welsh Government disability information

gov.wales/topics/people-and-communities/equality-diversity/rightsequality/disability/socialmodel/?lang=en

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Disability and work: a trade union guide to the law and good practice

"You don't look disabled": supporting members with invisible impairments

Disabled workers: A TUC Education workbook

Sickness absence and disability discrimination: a trade union negotiators guide to the law and good practice

TUC manifesto for disability equality

TUC Guide to Equality Law

TUC Equality Audit 2016

Trade unions and disabled members: why the social model matters

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This publication is also available in the Welsh language.

All TUC publications can be provided for dyslexic or visually impaired readers in an agreed accessible format, on request, at no extra cost.

This toolkit will be regularly updated, so we would welcome any comments or suggestions on how it could be improved. Please let us know if you notice anything that is out of date, unclear, or that you think may need correcting or updating.

Contact: Jo Rees

e: wtuceducation@tuc.org.uk t: 029 2034 7010

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CF11 9SD www.wtuc.org.uk

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