

The Role of Equality Law in Addressing Social and Economic Disadvantage and Inequalities. A grassroots look, focusing on work retention of disabled people

Audrey Ludwig, Suffolk Law Centre



Introduction

Disabled, discrimination law specialist solicitor and Director of Suffolk Law Centre





Tackling Discrimination in the East (TDE)

2013 - 2022

Why consider Disability In a Social Economic Context? (My googling efforts as not a researcher)

Being Disabled In Britain: A Journey Less Equal (EHRC) 2017

<https://www.equalityhumanrights.com/sites/default/files/being-disabled-in-britain.pdf>

- “It is a **badge of shame** on our society that millions of disabled people in Britain are still not being treated as equal citizens and continue to be denied the everyday rights non-disabled people take for granted, such as being able to access transport, appropriate health services and housing, or benefit from education and employment. The disability pay gap is persistent and widening, access to justice has deteriorated, and welfare reforms have significantly affected the already low living standards of disabled people.”

A few selected statistics in that report about life for disabled people

Education

- Across Britain in 2015/16, disabled young people aged 16-18 were at least **twice as likely** as their non-disabled peers to not be in education, employment or training (**NEET**).
- Having a degree-level qualification can significantly improve employment outcomes. The employment gap is smaller between disabled (60% employed six months after graduating, in 2009/10) and non-disabled graduates (65% employed) compared with the gap in the general population.
- The proportion of disabled people with **no qualifications** was nearly **three times that of non-disabled people** in 2015/16, and the proportion of disabled people with a degree remained lower than that of non-disabled people.

Education cont

- In 2014/15 pupils with identified SEN accounted for **just over half of all permanent exclusions and fixed-period exclusions**. Pupils with SEN support had the **highest permanent exclusion rate** and were **over seven times more likely to receive a permanent exclusion** than pupils with no SEN. This has life long impact



Housing

- Disabled people face problems in finding adequate housing and this is a major barrier to independent living; and developing a career.
- There is a shortage of accessible housing across Britain: of councils in England with a housing plan, **fewer than 17%** have set out **strategies to build accessible homes**.
- In Scotland the amount of wheelchair-adapted local authority housing for physically disabled people has decreased.



Standard of Living

- **More disabled people than non-disabled are living in poverty or are materially deprived.**
- UK data from 2014/15 shows that 30% of working-age adults in families where at least one member is disabled were living in households with below 60% of contemporary median income after housing costs, compared with 18% for those living in families with no disabled members.
- Across Great Britain, 59% of families with children, that were in income poverty and that contained a disabled person, lived in material deprivation in 2014/15, compared with an average material deprivation rate of 20%.

Work

- Despite an increase in the proportion of both disabled and non-disabled adults in employment in Britain in 2015/16, **less than half of disabled adults were in employment (47.6%)**, compared with almost 80% of the non-disabled adult population, and the gap between these groups has widened since 2010/11.
- A new report released by the Office for National Statistics shows that autistic people are the least likely to be in work of any other disabled group. Just **21.7% of autistic people are in employment**.

NB. According to the Office for National Statistics (ONS) in 2022, **22% of the working population is disabled**, which translates to **approximately one in five working adults**.

Work cont

- The disability pay gap in Britain continues to widen. In 2015-16 there was a **gap in median hourly earnings**: disabled people earned £9.85 compared with £11.41 for non-disabled people. Disabled young people (age 16-24) and disabled women had the lowest median hourly earnings.



Ageism and the Labour Market Report 2022

- Commissioned by Association for Disabled Professionals
- Authored by Dr. Sarabajaya Kumar & Dr. Colin Provost University College London Department of Political Science / School of Public Policy
- <https://adp.org.uk/wp-content/uploads/2022/06/Ableism-and-the-Labour-Market-2.pdf>
- Well worth a read (NB I was an interviewee)
- Also a podcast <https://adp.org.uk/research-project/>

“Up to 48,000 disabled people managed out of work each year”

- In 2016, the All Party Parliamentary Group (APPG) on Disability commissioned report <https://www.disabilityatwork.co.uk/wp-content/uploads/2016/11/All-Party-Parliamentary-Group-on-Disability-Ahead-of-the-Arc-Report.pdf>
- This in turn is quoted in Ableism and the Labour Market 2022
- **Extrapolating**
- **Pop of UK 67.22 million**
- **Pop of Suffolk 760,000**
- **So Suffolk pop is 1.1% of pop**
- **So up to 528 disabled people in Suffolk managed out of work each year.**
- **This was a demographic that our project de facto ended up addressing**

The role of Disabled People in economic growth, Parliamentary Report 2018

- <https://researchbriefings.files.parliament.uk/documents/CDP-2018-0038/CDP-2018-0038.pdf>
- The **best person for a job** may be someone who has a disability,
- Value that this person will bring to an organisation may **offset the costs** involved in employing them.
- **Increase the number of high quality applicants** available, and increase the likelihood of getting the right person for the job.
- Additionally the benefits derived from making the necessary adjustments required to keep someone who develops a disability in an organisation may offset the costs involved in making these adjustments. The average **cost of replacing** an individual employee is an estimated £30,000.

Why some employers are less likely to employ disabled workers than those who are not disabled?

The research briefing referenced the **Disability Employment Gap report** (January 2017), the Work and Pensions Committee reported the evidence that they had heard. This included the following:

- Employers were **unsure** of their Equality Act 2010 duties
- Employers were **unwilling to make adjustments** for disabled employees.
- Employers may hold **discriminatory or unhelpful attitudes** about disabled people's capabilities.
- Employers can **struggle to understand how disabled people could fit** into their existing workforce.
- **Anxiety** amongst employers around **etiquette** and how to approach a disabled person.

Why some employers are less likely to employ disabled workers than those who are not disabled?

- Separately, **Mencap** reviewed some of the perceived extra costs that can stop organisations from employing people with learning disabilities. They reported
- Concerns about the **extra supervision and training costs** that the employee may need.
- Concerns about the **cost of making reasonable adjustments** to accommodate someone with a disability.
- Concerns that workers with a learning disability would represent a greater **health and safety risk** than other workers.

Retention deficit: a new approach to boosting employment for people with health problems and disabilities *7 June 2016*

<https://www.resolutionfoundation.org/publications/retention-deficit/>

- The **policy focus** around employment for people with health problems and disabilities has been **too narrow**:
- **Too benefits-focused**, both in terms of the motivation and the preferred method of delivery. Many disabled people in work are not on benefits
- it's insufficiently focused on supporting people already in work to **stay in work**.

Retention deficit: a new approach to boosting employment for people with health problems and disabilities *7 June 2016 cont*

- **Too late to engage.** A typical trajectory from employment, to sickness absence to worklessness and benefit receipt involves six months in receipt of Statutory Sick Pay, followed by at least three months waiting to be assessed for Employment and Support Allowance and then directed towards back-to-work services. Time away from work is a key determinant of the chances of re-entering employment.

So what part does the Equality Act play?

- **Theory:** significant body of rights, even before day one of employment
- **Reality:** relies on disabled person to bring claim. So depends too often on Access to Justice..... which is patchy at best
- Those disabled people currently in low paid precarious employment are de facto worst off as:
 - Often disabled person just over legal aid limits,
 - Not likely to be union member
 - Unlikely to have legal expenses insurance
- This was the group our TDE project was primarily addressed at

Relevant Equality Act Claims

- Direct discrimination s13
- Discrimination Arising from Disability s15
- Indirect Discrimination s19
- Failure to Do Disability related Reasonable Adjustments s20/21
- Harassment s26
- Victimisation s27
- Breach of Public Sector Equality Duty s149 (EHRC or by JR)
- Criminal offence re assistance dogs in taxis s168

Tackling Discrimination in the East

- A very successful, impactful regional project aiming to improve people's wellbeing by addressing the legal issues of those experiencing unlawful discrimination who are unable to fund legal action themselves
- Just under half the clients were disabled; almost all of working age
- Since 2013 helped more than 2000 victims of alleged unlawful discrimination, either self referred or via another organisation
- Sadly our grant is now ending and not being renewed. So from September 2023 we have reduced staff in team by over half and only now taking legally aided discrimination cases


Andrew's story






Equality Act 2010 x Bury St Edmunds father awarded x +

eadt.co.uk/news/bury-st-edmunds-father-awarded-15-000-by-tribunal-after-2304200


[East Anglian Daily Times](#) > [News](#)

Bury St Edmunds father awarded £15,000 by tribunal after he was fired from a Subway franchise because he was autistic

 Chris Shimwell

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Published: 10:18 AM December 13, 2016 Updated: 4:26 PM October 11, 2020



Andrew Everitt with son Bradley. - Credit: Gregg Brown

Discrimination in the workplace is an isolating and traumatic experience but a Bury St Edmunds father has been awarded £15,000 by a tribunal after he was fired from a Subway franchise because he was autistic.

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Andrew's story cont

- Andrew has autism
- Transferred to Bury St Edmunds store after relocating. Previous worked successfully in another branch
- Made employers aware of his condition
- He turned up to shift to find previous non disabled staff member had left branch uncleaned. Before he could get sorted, Environmental Health officers turned up. He was blamed by management
- The investigation was conducted in an oppressive way with no reasonable adjustments.

Andrew's story cont

- He was dismissed. The non disabled staff member just given a warning
- We advised him and represented him throughout the long process through appeal, issuing proceedings to ET. My colleague Sallie Davies advocated at hearing
- The judgment found direct discrimination, discrimination arising from disability, and failure to do reasonable adjustments proved
- **Impact of discrimination** “He said: “I still don't really want to go back to work because of the way they treated me. I'm scared another company will treat me the same.
- “I want a job where I feel comfortable and able to support my family. I don't have any qualifications so it's hard for me to get into some professions.”
- It took about a year to get the full compensation paid after judgment

Isabella (Ivy)'s story

Equality Act 2010 | Bury St Edmunds father awarded | Tribunal finds Bury Subway franchi | DWP acted 'perversely' in sackin

theguardian.com/politics/2019/jan/21/dwp-department-work-pensions-acted-perversely-sacking-disabled-woman

MDM is key | ataccama


Welfare

This article is more than 3 years old

DWP acted 'perversely' in sacking of disabled woman, judge finds

Department discriminated against Isabella Valentine, employment tribunal rules

Amelia Hill
@byameliahill
Mon 21 Jan 2019 15:01 GMT




Valentine was employed by the DWP on a programme designed to get vulnerable, long-term unemployed people back into work. Photograph: Kirsty O'Connor/PA

A disabled woman was discriminated against when she was unfairly sacked

for Work and Pensions, which behaved in a "perverse"

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Ivy's story cont

- Her disability are cluster migraine headaches
- Due to ill health caused by her disability she struggled to find work
- Then employed by the DWP on a programme designed to get vulnerable, long-term unemployed people back into work by nurturing and training apprentices over a 12-month period
- However she wasn't treated in a nurturing way and after 4 days of sickness absence her line manager initiated disciplinary proceedings and ultimately sacked her.
- We gave her advice and issued ET proceedings. The judgment determined failure to do reasonable adjustments and discrimination arising from disability
- Judgment
https://assets.publishing.service.gov.uk/media/5c3488b8ed915d73182d8e45/Miss_Valentine_-_v_-_Department_of_Work_and_Pensions_-_3400502-2017_-_Reserved_Judgment.pdf

Ivy's story cont

- “When I was handpicked for this programme, I was so happy. I hoped that I had finally found employers who would let me do a good job while being understanding of the time off I sometimes have to take because of my migraines.
- “Instead, I was made to feel small and so stressed that my migraines got even worse. Not only were no reasonable adjustments made for my disability as legally required but I was subject to the same strict and unbending rules that permanent employees had to work by.”
- She added: “My manager started harassing me on the first day I took off sick because of a migraine. By the fourth day, the department had started disciplinary proceedings and decided to dismiss me. Which it then did.”

Department of Work and Pensions

- DWP is responsible for the much-criticised [Disability Confident scheme](#), which aims to help employers recruit and retain disabled employees. DWP claims to be a [Disability Confident “leader”](#), the highest of the scheme’s three levels.
- The DWP has been taken to the Employment Tribunal by staff almost [60 times](#) over claims of disability discrimination in a 20-month period. The DWP, which has about 75,000 staff, has the worst record on disability discrimination of any large government department with 57 cases, compared with 20 cases against the Home Office (which has about 30,000 staff), 32 against the Ministry of Justice (about 70,000 staff) and 29 against HM Revenue and Customs (about 60,000 staff).

Margaret and Jo (not real names)

- Two separate cases with similar facts
- Both worked in retail. One had a physical disability, the other autism.
- Both employers failed to do reasonable adjustments.
- Margaret was a manager, had a disability, and due to fatigue wanted to drop a day mid week down to a 5 day a weeks, to allow her recover. Her deputy (who covered for in holidays) happy to take the extra day.
- But employer said no. All managers had to work 6 days a week. They treated her request as a flexible working request and refused it.
- Despite us writing a grievance pointing out that duty to do reasonable adjustments was not a flexible working request but their duty to do reasonable adjustment still said no.

Margaret and Jo cont

- So we had to draft and issue ET proceedings. It was only then they got legal advice. Unsurprisingly, we settled the claim successfully (and confidentially). Client still works there
- Jo had already gone through the grievance process with no success. We advised and then issued Early Conciliation. That was unsuccessful. Issued ET proceedings. These were defended. Luckily, the Respondents solicitors were also very good. We ended up going to judicial mediation and the outcome successful in getting the changes made and compensation. Jo still works there (she was the one who told me there are only 22% of people with autism in a job)
- Neither were eligible for legal aid

So what can be done?

- All the reports cited have good suggestions including:
- a disability employment **outflow reduction target**
- Sort out **Access to Work Programme** – also opening it up and expanding it. There should be reduced time for upfront payments and reimbursements, and the cap on funding should be removed
- The government should learn from the success of maternity policy by introducing a **statutory ‘right to return’ period** of one year from the start of sickness absence – conditions and incentives for employers
- a single, comprehensive, **local employment support service** for those with disabilities and health problems, regardless of benefit receipt

So what can be done? cont

- Universal Credit – **'work allowances'** for disabled recipients should be significantly boosted
- Organisations **centralise requests and budgets for Reasonable Adjustments** or move to the concept of 'workplace adjustments' as is best practice by leading disability-positive employers (that concerns me)
- Disabled workers should be present **on employment tribunal panels**, thus ensuring greater panel diversity

My views (additions to previous recommendations and refunding our project)

- **Non means test legal aid** for disabled people to get reasonable adjustments- or at least fund medical evidence
- Employers still not understanding **difference between Flexible Working Regulations and duty to do Reasonable Adjustments**. Some education needed but also an expectation of better decision making not just a statutory defence (s109 EA)
- **Higher ET awards** for failure to do reasonable adjustments
- Make **Disability Confident independent of DWP**

My views cont.

- Make **EDI training more focused on legal duties** than “hearts and minds” stuff - quality assurance scheme to ensure it is legally accurate?
- **Successor to Fit to Work?** Fit for Work assessment service ended in 2018. Occupational health is expensive for small employers and GPs cannot fill that role. Need to bridge that gap – possible by better Access To Work provision
- Conditions on a spectrum like asthma, depression, autism – need to **challenge prejudice** by some line managers (especially if they also suffer milder version of condition and so don't perceive it as disability)

Thank You for Listening



Audrey Ludwig

Director and Senior Solicitor

Suffolk Law Centre

Audrey@suffolklawcentre.org.uk

Tel 01473 40811