

## **‘Legally Disabled?’ submission to the Committee for Economy, Infrastructure and Skills ‘Remote Working: Implications for Wales.’ January 2021**

### **The ‘Legally Disabled?’ research team, Cardiff Business School**

The [‘Legally Disabled?’](#) team consists of Prof Debbie Foster, Professor of Employment Relations & Diversity at Cardiff Business School, Cardiff University and co-researcher Dr Natasha Hirst, independent researcher, photo-journalist and disability rights campaigner.

Our earlier research [published in January 2020](#) was funded by national lottery money awarded to DRILL (Disability Research for Independent Living and Learning), a four nations consortium of the UK’s disability rights organisations. Disability Wales selected the Legally Disabled bid for funding, which explored the career experiences of disabled people working in the legal profession.

This research is the first of its kind, underpinned by the social model of disability and led by disabled researchers and designed and delivered in coproduction with the Lawyers with Disabilities Division of The Law Society and disabled people across the legal profession in England and Wales.

Our follow up research [published in October 2020](#) was funded by The Law Society. It ran from the 23rd July - 16th August 2020 and asked respondents questions relevant to their work experiences during the period from the first Covid-19 lockdown in March of 2020 to July/ August of 2020, when some employers were beginning to implement limited combined home and remote working. It was restricted to disabled lawyers in training or employment or actively seeking training and employment.

We draw on both reports to evidence our submission to this consultation.

## Introduction

The Welsh Parliament is well placed to promote policies that encourage inclusive and accessible ways of working and reduce the barriers that disabled people face in entering and progressing in a career of their choice. The Covid-19 pandemic has forced employers to quickly adapt to remote working. It has encouraged innovation in finding technological and communications solutions, many of which are highly beneficial to disabled people.

We welcome the ambition “to have 30% of workers in Wales working remotely on a regular basis over the long term.” While recognising that Covid-19 has presented serious challenges to disabled people, our research into the career experiences of disabled people in the legal profession identifies how the lessons learned from remote working during Covid-19 can reduce many barriers to employment and career progression, across a number of professional occupations.

Most notably, Covid-19 has cast a spotlight on what our [‘Legally Disabled?’ research](#) had identified as the most requested (and most refused) reasonable adjustment: remote or home-working. The fact that Covid-19 necessitated that almost everyone in the legal profession experienced home-working, has been significant.

The universalisation of this shared experience has been transformative and has catapulted what was regarded as a minority request or a second-class way of working, into a mainstream concern and priority. Predictions that home-working will become a permanent and accepted feature of future working arrangements has also provided new opportunities to shape more inclusive working environments.

It has also identified new opportunities such as disability inclusive job-redesign and the valuable contribution disabled people (often more experienced home-workers than colleagues) can make to new ways of working.

## Issues affecting the workforce, and skills

Our research found disabled people in the legal profession entitled to workplace adjustments were often not receiving them, because they feared the consequences of making a request. Furthermore, among those that did, a significant number experienced ill-treatment, ignorance or discrimination from senior personnel, ill-equipped to respond to them. Our research suggests that day-to-day, disabled people in the legal profession confront rituals, practices and attitudes that exclude or undermine them in their roles as trainees, advocates and employees. Our research also highlighted what we call ‘misplaced paternalism’: where senior

colleagues can make assumptions that underestimate disabled people's abilities and aspirations and deny them opportunities that would advance their career, with the seemingly good (but misplaced) intention of 'protecting them'. Wider evidence suggests that these are common experiences for disabled people in other occupations.

Broader social and employment policy has concentrated on the entry of disabled people into 'any work' (the all work test), often meaning low skilled and low paid jobs, instead of starting from the assumption that the labour market is failing to utilise untapped talent. Media narratives that portray disabled people simultaneously as charity cases and 'victims' or 'scroungers', also sustain negative stereotypes. Consequently, talented, educated and successful disabled people are presented as 'exceptions', 'remarkable', or 'inspirational', as opposed to being expected.

- We call on Welsh Government to support disabled people in training and the development of long-term careers and to end the current patronising preoccupation with low expectations. We cannot hope to improve the employment rate or decrease the pay gap for disabled people without removing the barriers to developing professional careers.
- Encourage employers and networks to introduce or expand schemes such as mentoring, training and supportive line management.

### Health (physical and mental) and wellbeing;

Respondents to our Covid-19 survey told us that working from home brings health and well-being benefits, but one size does not fit all. A number of work-related barriers and stresses are removed through home-working, e.g. tiring commutes and building more flexibility into the working day. This enables many disabled people to maintain energy levels and better manage their impairment. Many also reported an improvement to their physical and mental health through home-working.

Despite these benefits disabled people expressed a wish to have a level of choice to work remotely and in the office in future. A significant minority found it difficult to manage their mental health when remote working and not all have a home environment that is conducive. It should **not** be assumed that all disabled employees would prefer to work from home.

Communications and working relationships were important to disabled people during the pandemic. Successful efforts have been made to support staff to manage their mental health and well-being in a variety of ways and most of our survey respondents felt that they had enough social contact with colleagues, although they missed being in a work environment alongside colleagues.

Successful communications strategies included remote socials, staff training and development and regular team and management meetings. However, we found a mixed picture regarding communication with managers and colleagues that indicated variability in working cultures and practices. This suggests that more needs to be done by employers to overcome the challenges of maintaining constructive working relationships for teams and clear lines of communication for individuals working remotely. Consideration needs to be given to different impairments when doing this. In addition to 'concentration fatigue' our findings showed that individuals who identified as neurodivergent or on the autistic spectrum as well as sight and hearing impairments struggled with the loss of visual cues.

Although not covered by our research, it is becoming apparent that longer term health implications exist for those with 'long covid' and for an increasing number experiencing Post Traumatic Stress Disorder and other forms of mental distress resulting from the pandemic.

- Choice and suitability of working location for disabled people is important. Avoid creating new exclusionary practices by making assumptions about where people should work. Irrespective of location, reasonable adjustments need to be put in place and regularly reviewed.
- Public spaces, remote working hubs and office spaces must be accessible to disabled people and will need to adapt to meet Covid-19 safety requirements. For example, ensuring that there is adequate space for wheelchair users, adequate seating where queuing is in place, transparent visors to support lipreaders and supporting people with vision impairments to navigate shared spaces.
- Support for employees with chronic illness, pain, fatigue and mental distress should be reviewed.

**Inequalities between different groups and different parts of Wales (including those areas of with poor connectivity);**

For those disabled in childhood, positive experiences of parenting and schooling were significant in developing self-advocacy skills and confidence: indicators for success in later career stages.

- Increasing expectations and improving educational support and advocacy for disabled children is necessary to build the aspirations and skills needed to enter employment and build a career.

**How can the benefits of remote working be maximised, and what can be done to mitigate any potential risks and negative impacts?**

We found exclusion of disabled people was not always intentional, but routinely accepted in relation to behavioural codes, rituals and stereotypical expectations. The experience of remote working during Covid-19 has disrupted many traditional working practices.

Disabled people in our 'Legally Disabled?' research frequently reported an organisational reluctance to adapt, reform, or address exclusionary practices and an unwillingness to listen to suggested practical adjustments based on their experiences. In organisations where a disabled person occupied a senior position, or an organisation exhibited 'high trust' relationships between staff, it was more likely that suggestions from disabled people about adjustments and working environments were welcomed. However, we found limited knowledge of the range of adjustments and equipment available, because of the under-utilisation of experienced providers such as Access to Work.

Mass home-working has created a new working environment and it is essential that appropriate reasonable adjustments are developed for this context. Adjustments need to be developed for different contexts to effectively integrate and include disabled employees. It is, nonetheless, important not to assume that home-working automatically equates to flexible working. Genuine flexible working gives individuals reasonable control over when, where and how they work their hours. This is particularly important for disabled people with impairments that may fluctuate, cause pain or fatigue. It is a reasonable adjustment to allocate or exchange some tasks from a role to another person to make the role accessible through job redesign and this is woefully underutilised by employers.

Our findings showed that having control over when and how to work enables disabled people to manage energy levels and work more productively. Respondents to our Covid-19 survey felt that they were more trusted and had greater autonomy

in carrying out their work. This is likely to have contributed towards increased productivity.

Those who had been home working prior to Covid-19 often reported feeling isolated from their colleagues. During the pandemic, disabled people reported experiencing new, more accessible opportunities including remote work experience, professional development, social events and networking. Captioning, the ability to access recordings at more suitable times and additional methods of participation (via chat boxes as well as verbal contributions) has enabled many disabled people to participate more than ever before in formal and informal activities within their organisation. This allows them to gain more skills but also be better integrated into decision-making and organisational culture.

Technology, particularly remote meeting and conference platforms, were both enabling and disabling depending on individual impairment and circumstances. Remote options are not accessible for all and some reasonable adjustments or alternatives may be needed.

We found remote recruitment processes were not always beneficial to disabled people. This was disappointing, particularly because common barriers cited by disabled people in our earlier research included inaccessible built environments and travel, which were removed through remote processes. We were also disappointed to find that many disabled candidates experience direct and indirect discrimination by recruitment agencies.

Organisations need to understand the needs of disabled people applying to and in their organisation to meet their access requirements and utilise available accessibility functions of online platforms or provide in-person alternatives where requested and safe.

- In seeking solutions to implement remote working in a way that is inclusive and accessible, employers must work closely with disabled people to identify the barriers and solutions to achieving their potential at work.
- Remote working removes some of the norms of office-based working that were barriers to disabled people. The importance of travel, presenteeism and appearance are reduced. There is potential to recruit a different kind of employee, develop different skills and build teams in a different way. Considering inclusion and accessibility from the outset will create a better experience for all who take part.

- A range of organisational policies and practices should be reviewed when developing remote/hybrid working and equality impact assessments carried out. This includes recruitment procedures, sickness absence policies and supervision procedures. This work should be done in partnership with disabled employees and trade unions.
- Develop expertise to understand both common, but also individual impairment IT adjustments. Technological accessibility and reliability may be an issue for a wider pool of users, including clients.
- Access and inclusion is important for employers, business networks and training providers to address.

### Which parts of the Welsh economy or workforce would be particularly affected by remote working proposals, projects and initiatives?

We believe that disabled people can benefit greatly through improved access to remote working opportunities. However, they also risk becoming excluded and isolated by dangerous assumptions and stereotypes about what disabled people want or need. Women and those with caring responsibilities will also be affected by remote working policies. Intersectionality of different identities and needs presents additional impacts for people with more than one protected characteristic.

People living in poverty, with poor access to accessible housing, social services, healthcare and broadband will face additional disadvantage.

- It is crucial that disabled people are central to the development of remote working policies and practices at Government, institutional and workplace levels.

### What do you think the equality impacts - both positive and negative - would be of the Welsh Government's remote working proposals? What specific work needs to be undertaken to assess those impacts?

Too little research exists on the experiences of disabled people in professional occupations. Disability is much more than a medical diagnosis or a state of health and this needs to be better understood and appreciated by listening to the views of disabled people themselves. 'The Legally Disabled?' research took a social-model and disability-led approach to identifying priorities and solutions for disabled legal professionals.



A similar approach would benefit evidence-based interventions to improve the employment experiences of disabled people in other sectors and through remote working.

Our evidence suggests increased availability of remote working could have widespread positive benefits for disabled people. However, further research is needed on how disabled people from different impairment groups experience remote working, so that clear guidelines for employers can be developed about the suitability of home working for some disabled people and the types of adjustments that might be required.

### How should Welsh Government work in partnership with the public sector, private sector and voluntary sector to deliver its remote working proposals?

Employers across all sectors need to improve their understanding of and attitudes towards disability inclusions.

Our research demonstrates many people with long term health conditions, non-visible impairments or mental health conditions don't automatically identify as disabled, even on anonymous workplace surveys. This suggests many who should be receiving workplace adjustments are not requesting them, or are only receiving partial adjustments and are unable, therefore, to realise their full potential.

Limited opportunities to request basic reasonable adjustments at application and recruitment stages, were cited as key obstacles in our research. Few were willing to initiate such a request, for fear of discrimination. Those that did request, reported mixed, and largely negative, experiences. An important consideration for many disabled applicants was how accessible potential employers were. Addressing accessibility should not just involve access for wheelchair users, but consideration needs to be given to a range of physical, sensory or learning impairments. Remote working and 'hybrid' working environments bring a new set of accessibility and communication challenges and opportunities.

During the first lockdown, some people declared their disability for the first time. Now more than any other time it's important to create organisational cultures and have conversations that enable disabled people to feel confident to disclose to their employer. Not only does this mean employees receive the equipment and working practices to realise their full potential and productivity, but it ensures that employers are confident that they have met the test of 'reasonableness' in this new working environment.

Everyone requires robust IT and communications systems to be productive, indeed to have the opportunity to access employment at all. Good IT support ranked highly as supporting people to cope with the challenges of home-working but many areas of Wales lack reliable broadband connections.

- Employers must work hard to create workplaces where disabled people are confident to apply for jobs and feel safe to disclose and seek support where needed. Welsh Government and industry bodies and trade unions should play a leadership role in supporting such a culture change and sharing a positive narrative about the value that disabled people bring to the workforce.
- The presence of senior disabled role models and disabled people in positions of leadership is pivotal to challenging attitudes and increasing aspirations.
- Business support services and funding schemes should increase expertise and targeted interventions to improve opportunities and outcomes for disabled people.
- Disabled People's Organisations should be resourced to support employers to understand and embrace disability inclusion. Remote working has the potential to address a number of access barriers but improved support for employers to make the most of these opportunities is vital.
- Increased promotion of the role of Access to Work funding is necessary for reducing employers' perceived barriers to including disabled people on their workforce.

**How should the success of measures to implement the remote working proposals be evaluated and monitored?**

Improve the evidence base on the outcomes for disabled people in employment. Robust quantitative data collection should be complemented with qualitative data giving voice to disabled workers' experiences.

Monitor:

- Improvement to pay and employment gaps for disabled people
- Workforce satisfaction surveys
- Availability and receipt of appropriate reasonable adjustments and support in the home

- Availability of career advancement opportunities including training and mentoring suitable for disabled people and evidence of promotions/ barriers
- Disclosure rates of disabled people in the workplace
- Feedback from trade unions and Disabled People's Organisations

['Legally Disabled? The Career Experiences of disabled people working in the legal profession.'](#) Foster, D., and Hirst, N., (2020), Cardiff University

['The Impact of Covid-19 on the training and employment of disabled lawyers in England and Wales: Opportunities for job redesign and best practice.'](#) Foster, D., and Hirst, N., (2020), Cardiff University