

Cyflwynwyd yr ymateb i ymgynghoriad y Pwyllgor Cydraddoldeb a Chyfiawnder Cymdeithasol ar Anabledd a Chyflogaeth

This response was submitted to the Equality and Social Justice Committee consultation on Disability and Employment

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Consultation response

Disability and Employment

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About us

The Equality and Human Rights Commission is the independent equality regulator for England, Scotland and Wales and is a UN-recognised 'A' status National Human Rights Institution. The Commission has a statutory mandate to advise Government and Parliament on matters relating to equality and human rights, and to promote and protect equality and human rights across Britain.

We welcome the opportunity to contribute to the Equality and Social Justice Committee's inquiry into Disability and Employment. We would be happy to discuss any aspect of our response with Committee members.

Questions

1. What progress has been made to deliver the recommendations set out in the ‘Locked Out’ report and to reduce and remove barriers faced by disabled people who want to access Wales’s labour market. Why progress to reduce the employment and pay disability gap has been so difficult to achieve.

1.1 Locked out Report and barriers to the labour market faced by disabled people

1.1.1 The Locked Out Report published in 2021 explored 5 overarching themes with sub themes under each. As the focus of this inquiry is disability and employment we have limited our comments to the recommendations related to employment.

1.1.2 Some progress has been made in relation to some of the relevant recommendations in the report; others related to specific recommendations for the immediate aftermath of the COVID-19 pandemic are not necessarily still relevant today; and others have not progressed.

1.1.3 Much of the work done by the Welsh Government to date has been laying the foundations for future policy. There have been consistent delays in policy implementation in the area and the Welsh Government should take swift action to mitigate the inequalities and barriers to work faced by disabled people in Wales. It is important that the Welsh Government monitors outcomes from any actions taken.

1.1.4 A disability disparity evidence unit was established by the Welsh Government in January 2022 (along with a Race disparity evidence unit and an Equality evidence unit). The disability disparity evidence unit “...focus is improving the equality evidence for use in decision-making, delivery of policies/interventions, provision of services research and debate, both within the Welsh public sector and beyond”.¹

1.1.5 In March 2022 the Welsh Government published ‘Stronger, Fairer, Greener Wales – A Plan for Employability and Skills’² which placed a renewed focus on improving labour market outcomes for disabled people³.

1.1.6 The Welsh Government has developed and delivered a workers’ rights and responsibilities campaign to raise awareness of workers’ rights and avenues of information, advice, and guidance. The Workplace Rights and Responsibilities Forum has been created. This brings together employer representatives, trade unions, and workplace regulators like the HSE, the Gangmasters and Labour Abuse Authority and HMRC’s minimum wage enforcement unit.

¹ <https://www.gov.wales/equality-race-and-disability-evidence-units-strategy-html>

² <https://www.gov.wales/sites/default/files/publications/2022-05/stronger-fairer-greener-wales-plan-employability-and-skills0.pdf>

³ <https://research.senedd.wales/research-articles/access-to-work-for-disabled-people-in-wales/>

1.1.7 A More Equal Wales: A practical guide for employers to employing disabled people⁴ was published by the Welsh Government to provide practical help and advice for employers on recruiting, developing and supporting disabled people in Wales. **We recommend the Welsh Government promote forthcoming EHRC hybrid working and reasonable adjustments guidance as a resource for employers.**

1.1.8 In 2019 the Right to Independent Living Framework and Action Plan⁵ established a network of Disabled People's Employment Champions (DPECs)⁶ to provide advice, information and support to employers across Wales. The objectives of the DPECs current workplan are aimed at addressing barriers to disabled people accessing the labour market.

1.1.9 The Disability Rights Taskforce⁷ was established by the Welsh Government as part of its response to the publication of the Locked Out report. The Taskforce had ten priority areas, including employment and income.

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<https://businesswales.gov.wales/skillsgateway/sites/skillsgateway/files/documents/Employers%20Guide%20to%20Employing%20Disabled%20People%20-%20EN.pdf>

⁵ <https://www.gov.wales/sites/default/files/publications/2019-09/action-on-disability-the-right-to-independent-living-framework-and-action-plan.pdf>

⁶ <https://businesswales.gov.wales/skillsgateway/disabled-peoples-employment>

⁷ <https://www.gov.wales/disability-rights-taskforce#:~:text=What%20we%20do,beyond%20the%20COVID%2D19%20pandemic.>

1.1.10 We were pleased to sit as an observer on the Employment and Income sub-group. Several of the final recommendations of this group reflected our advice and if these are accepted by the Welsh Government, they should help address some of the recommendations put forward in the Locked Out report. **We recommend the Welsh Government accepts the sub-group recommendations.**

1.1.11 The reporting of the Taskforce and therefore the publication of the Disability Action Plan has been delayed, but we are expecting it to be published this year. **We recommend the Welsh Government publishes this action plan urgently and considers how this plan will align with other action plans in relation to gender, race and LGBTQ+ to deliver the Welsh Government's equality objectives 2024-28.**

1.1.12 The Locked Out report recommended that “the Welsh Government urgently prioritise the incorporation of the United Nations Convention on the rights of disabled people (UNCRPD) into Welsh law, to help ensure that disabled people’s human rights going forward are given greater protection”.⁸ We are observers on the Welsh Government’s Legislative Options Group which is exploring incorporation, but progress has been slow. **We recommend that the Welsh Government prioritises meeting its commitment to incorporate the UNCRPD into Welsh law.**

⁸ <https://www.gov.wales/locked-out-liberating-disabled-peoples-lives-and-rights-wales-beyond-covid-19-html>

1.2 Barriers to the labour market faced by disabled people

1.2.1 The UN Committee on the Rights of Persons with Disabilities has an ongoing inquiry into the UK Government because of concerns about the regression of the rights of disabled people. **We recommend the Welsh Government works with the new UK Government to address the Committee's concerns.**

1.2.2 Disabled people are consistently much less likely to be employed than non-disabled people. However, when comparing 2013/14 to 2019/20, the disability employment gap in Wales has narrowed from 39.6 percentage points to 36.2 percentage points.⁹

1.2.3 The gap closed further by 2022 (July) standing at 32.3 percentage points. This is higher than the gap in Scotland (31.6 percentage points) and the UK as a whole (29.8 percentage points).

1.2.4 Despite the narrowing of the disability employment gap it remains too high. The picture also varies depending on the location in Wales and the type of impairment. There are regional differences with the gap highest in Blaenau Gwent (46.8 percentage points) and Neath Port Talbot (44.5 percentage points).¹⁰ We suggest the Welsh Government undertakes a piece of work to explore these regional differences, which could be undertaken by the disability disparity unit (referenced above in point 1.1.4).

⁹ Is Wales Fairer 2023

¹⁰ <https://research.senedd.wales/research-articles/access-to-work-for-disabled-people-in-wales/>

1.2.5 Those with vision or learning difficulty impairments are the exception to the narrowing of the disability employment gap.¹¹ Research by Mencap indicates that grouping together all individuals with ‘learning difficulties and learning disabilities’ masks further labour market disparities which exist within this group.¹²

1.2.6 In 2020/21, following the onset of COVID-19, there were some short-term shifts in labour market differences between disabled and non-disabled workers, but most of these changes were not sustained into 2021/22. An increase in the insecure employment gap was the exception. Prior to the pandemic, in 2019/20, the proportions of disabled and non-disabled workers who were in insecure employment were similar. However, disabled workers’ insecure employment rate showed a significant increase in 2021/22, creating a significant gap in insecure employment rates between disabled and non-disabled workers. A widening disability gap in insecure employment rates during the pandemic was unique to Wales; it was not seen in England or Scotland.

1.2.7 Disabled workers are also more likely to be working part time, with 41% of disabled workers and 29% of non-disabled workers working part-time.¹³ Evidence shows that the gender pay gap is higher for part time workers, and this is likely to be the case for other pay gaps.

¹¹ Is Wales Fairer 2023

¹² Is Wales Fairer 2023

¹³ <https://research.senedd.wales/research-articles/access-to-work-for-disabled-people-in-wales/>

1.2.8 While disability gaps in employment in Wales have been closing since 2013/14, the same cannot be said about earnings. Disabled workers' median hourly earnings have stagnated and non-disabled workers' earnings have grown.¹⁴ The disability earnings gap more than doubled between 2013/14 and 2019/20¹⁵.

1.2.9 The disability pay difference in Wales was 9.7% in 2022. The difference has continued to steadily decrease from a peak of 15.1% in 2019.¹⁶

1.2.10 The UK Government has indicated that it will extend pay reporting to disability and ethnicity and will make it mandatory for in-scope employers to publish action plans to address any pay and employment disparities. The stated purpose is to create a more equal society and support a growing economy. We view disability workforce monitoring and reporting as a useful transparency measure which can raise awareness, make employers publicly accountable for their disability employment and pay gaps, and incentivise them to analyse the drivers behind their gaps and take action to address them.¹⁷

¹⁴ Is Wales Fairer 2023

¹⁵ Is Wales Fairer 2023

¹⁶ [https://www.gov.wales/wellbeing-wales-2023-more-equal-wales-html#:~:text=The%20disability%20pay%20difference%20in%20Wales%20was%20%C2%A31.32%20\(9.7,peak%20of%2015.1%25%20in%202019.](https://www.gov.wales/wellbeing-wales-2023-more-equal-wales-html#:~:text=The%20disability%20pay%20difference%20in%20Wales%20was%20%C2%A31.32%20(9.7,peak%20of%2015.1%25%20in%202019.)

¹⁷ <https://www.equalityhumanrights.com/our-work/advising-parliament-and-governments/response-disability-workforce-reporting-1-april-2022>

1.2.11 The EHRC recognises that publication of workforce data can be a useful transparency measure. However disability reporting is complex, and for employment and/or pay gap reporting to be effective it will need to be based on comprehensive and meaningful data that is feasible and appropriate for employers to gather, use and act on, and be underpinned by advice and guidance for employers so that they are able to gather and report robust data.

1.2.12 As such we recommend the Welsh Government, in liaison with Scottish and UK Governments and other stakeholders, should produce resources to support employers increase self-reporting rates on disability.

1.2.13 However, we recognise that this is only a first step, and any reporting should be supplemented by target-driven and time-bound action on the part of employers to address pay and employment disparities.

1.2.14 We recommend any action the Welsh Government takes to address disability pay gaps also considers the recruitment, retention and progression rates of disabled people. This should be appropriately disaggregated by impairment type.

1.2.15 The Welsh Government has published plans to increase some disabled peoples access to the labour market. The Learning Disability Strategic Action Plan 2022 to 2026¹⁸ prioritises improving access to employment, training and support for people with learning disabilities. **We recommend the Welsh Government monitors and evaluates progress against the plan.**

¹⁸ <https://www.gov.wales/learning-disability-strategic-action-plan-2022-2026-html>

1.2.16 The Welsh Government's programme for government set out a commitment to "explore legislation to address pay gaps based on gender, sexual orientation, ethnicity, disability and other forms of discrimination" The Welsh Government's annual report 2023-24 states that it has completed this commitment and goes on to say that the Welsh Government has used its "...influence through the Workforce Partnership Council (WPC) to take action which does not require new legislation".

1.2.17 Through the WPC, the Welsh Government published a Joint Statement which reinforced the importance of diversity monitoring and encouraged public bodies to review their data collection processes and follow best practice.

1.2.18 The Welsh Government committed to build on this work with further activity to promote more transparency and consistency in diversity pay gap reporting, recognising the importance of public bodies in Wales setting an example of best practice.¹⁹

1.2.19 We have a particular interest in the UK Government's Plan to Make Work Pay and the commitment to strengthen and enhance workplace rights through the Employment Rights Bill and the Draft Equality (Race and Disability) Bill. We believe these Bills have the potential to benefit workers with protected characteristics who continue to be at a disadvantage in the labour market.

¹⁹ <https://www.gov.wales/sites/default/files/publications/2024-07/welsh-government-annual-report-2024-annex.pdf>

1.2.20 Given our remit and extensive experience in the application of equality law, we are intending to advise officials as they develop this new legislation, particularly on how section 149 of the Equality Act, the Public Sector Equality Duty (PSED), can be used to inform and strengthen future legislation, policy and wider departmental equality objectives.

1.2.21 We recommend the Welsh Government publishes a report detailing the findings of its work to explore legislation in this area and explore the feasibility of extending the gender pay differences duty to disability and ethnicity as part of the review of the PSED Specific Duties for Wales.

1.2.22 We recommend the Welsh Government takes action and restarts its review of the Specific Duties for Wales, so that options for addressing disability pay gaps including a focus on recruitment, retention and progression can be explored as part of this review.

1.2.23 We recommend the Welsh Government works with the UK Government on any Equality (Race and Disability) Bill and Employment Rights Bill to maximise opportunities for addressing employment and pay gaps in Wales.

2. How the social model of disability is being used to underpin employment and recruitment practices, and what barriers continue to exist throughout society that impact on access to work (i.e. transport, attitudes).

Not answered

3. How effective Welsh Government actions (e.g. the network of Disability Employment Champions and apprenticeships) have been in reducing barriers to employment and reducing the employment gap between disabled and non-disabled people, including the extent to which Welsh Government policies complement/ duplicate/ undermine those set by the UK Government.

Not answered

4. Whether disabled people are accessing apprenticeships and if any further support is needed to ensure all schemes are inclusive.

4.1 The Welsh Government's apprenticeship policy, *Aligning the Apprenticeship Model to the Needs of the Welsh Economy*²⁰, published in 2017, highlighted its commitment to improving access, equality and equity of opportunity. The plan complemented and supported delivery of Prosperity for All, and the Welsh Government Economic Action Plan for Wales²¹. The Employability Plan²² published in March 2018 sets out how the Welsh Government intends to support those furthest from the labour market, the economically inactive and those at risk of redundancy, into work.

²⁰ <https://www.gov.wales/sites/default/files/publications/2018-03/aligning-the-apprenticeship-model-to-the-needs-of-the-welsh-economy.pdf>

²¹ <https://www.gov.wales/sites/default/files/publications/2019-02/prosperity-for-all-economic-action-plan-executive-summary.pdf>

²² <https://www.gov.wales/employability-plan-2018>

4.2 Priorities in the Welsh Government's 2022 employability and skills plan include creating 125,000 apprenticeships by 2026. This target was reduced in December 2023 to 110,000²³. We note that there were no targets set for increasing the participation of underrepresented groups including disabled people in apprenticeships.

4.3 We recommend the Welsh Government and Medr consider setting targets to increase the participation of underrepresented groups in apprenticeships.

4.4 In 2018, the Welsh Government responded to evidence of the low number of disabled apprentices and a recommendation from the Senedd Economy and Infrastructure and Skills Committee with the Inclusive Apprenticeships: Disability Action Plan for Apprenticeships 2018–21²⁴. In its Equality Annual Report 2019 to 2021, the Welsh Government reported that the number of disabled apprentices had increased year on year, reaching 6.9% in 2019. There has however, been no evaluation of the Inclusive Apprenticeships: Disability Action Plan for Apprenticeships 2018–21.

4.5 The Welsh Government apprenticeship learning programmes started interactive dashboard shows that by quarter 2 of 2023/24 515 apprenticeship learning programmes were started by learners who self-identified as having a disability and/or learning difficulty. The dashboard shows that the number of disabled people starting apprenticeships increased to 11%.²⁵

²³ Is Wales Fairer 2023

²⁴ <https://www.gov.wales/sites/default/files/publications/2018-11/inclusive-apprenticeships-disability-action-plan-for-apprenticeships-2018-21-1.pdf>

²⁵ <https://www.gov.wales/apprenticeship-learning-programmes-started-interactive-dashboard>

4.6 Medr (the Commission for Tertiary Education and Research) is a new arm's length body responsible for funding and overseeing post-16 education and research. Medr became operational on 1st August 2024. This body has responsibility for apprenticeships²⁶.

4.7 We recommend the Welsh Government and Medr address the under-representation of disabled people participating in and completing apprenticeships, including by evaluating its apprenticeships programme and the Inclusive Apprenticeships: Disability Action Plan for Apprenticeships and holding apprenticeship providers to account for implementation through procurement and funding mechanisms²⁷.

4.8 In February 2024 the Welsh Government apprenticeships policy statement included a focus on 'inclusive apprenticeships improving people's life chances (objective 3).²⁸ The statement says that "We are acutely aware that barriers exist excluding groups from accessing and completing apprenticeships. Whilst we have increased the diversity of apprenticeships, specific barriers remain. Learners can face difficulties in finding suitable work placements, especially where employers believe there will be a need to provide additional support. They can face real or perceived discrimination with fewer apprenticeship role models from the Black Asian Minority Ethnic communities or from disabled groups. On occasion we see available support for learners not being accessed or fully utilised".

4.9 We recommend the Welsh Government takes action to understand why support for learners is not being accessed or fully utilised and takes steps to address this.

²⁶ <https://www.gov.wales/commission-tertiary-education-and-research/about-commission-tertiary-education-and-research-cter>

²⁷ Is Wales Fairer 2023

²⁸ <https://www.gov.wales/apprenticeships-policy-statement-html>

4.10 Actions listed under objective 3 include “ensure apprenticeships are accessible to individuals from all backgrounds and that our Welsh workforce is more representative of the communities we serve; and promote fair work for all: using our levers to improve the offer for workers, and encourage employers to make work better, fairer and more secure”.

4.11 Two strategic priority areas in the Learning Disability Strategic Action Plan 2022 to 2026, in relation to employment and skills are to support improved access to employment, training and support for people with learning disabilities to enter and remain in the workplace; and supported apprenticeships.²⁹

4.12 The Welsh Government 2020-2024 equality objectives (as required under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011 Regulation 3³⁰) included a specific action under equality objective 3 to “... address the under representation of disabled people in apprenticeships”. In relation to how success will be measured the Welsh Government committed to “..monitor the participation of disabled people in apprenticeships and review the effectiveness of the actions we are taking”.³¹

4.13 To date the Welsh Government has no strategic equality plan or action plan accompanying the Welsh Government 2024-28 equality objectives. **We recommend the Welsh Government considers how it can use its equality objectives to address the persistent inequalities faced by disabled people in the labour market in Wales and increase participation of disabled people in apprenticeships.**

²⁹ <https://www.gov.wales/learning-disability-strategic-action-plan-2022-2026-html#98021>

³⁰ <https://www.legislation.gov.uk/wsi/2011/1064/regulation/3>

³¹ <https://www.gov.wales/sites/default/files/publications/2020-04/strategic-equality-plan-equality-aims-objectives-actions-2020-2024.pdf>

4.14 We also recommend that Medr consider under-representation in apprenticeships when setting and reviewing their equality objectives and strategic priorities.

5. What further policy measures are needed to support disabled people, young disabled people and employers to increase participation rates and what can be learned from elsewhere.

5.1 Public Sector Equality Duty (PSED)

5.1.1 The Welsh Government and listed public authorities in Wales are required to show due regard to the general equality duty (GED) and meet their obligations under the Equality Act 2010 (Statutory Duties) (Wales) Regulations 2011.

5.1.2 Section 149³² of the Equality Act 2010 imposes a duty on ‘public authorities’ and other bodies when exercising public functions to have due regard to the need to:

- a. eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act
- b. advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it, and
- c. foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

³² <https://www.legislation.gov.uk/ukpga/2010/15/section/149>

5.1.3 We recommend the Welsh Government uses its obligations under the GED and the Specific Duties for Wales to address the disability employment gap and the disability pay gap.

5.2 Is Wales Fairer? 2023

5.2.1 We recommend the Welsh Government, employers including public bodies, employer bodies, umbrella groups; and their social partners and other relevant bodies should take action to address employment gaps, different treatment at work and insecure employment, inequalities in recruitment, retention and progression in the workplace and reduce gender, ethnicity and disability pay gaps, including through positive action, as permitted in the Equality Act³³.

5.3 Reasonable Adjustments

5.3.1 The Equality Act 2010 includes a duty on employers to make reasonable adjustments for disabled employees throughout the employment journey (including during the recruitment stage). This duty aims to make sure that, as far as is reasonable, a disabled worker has the same access to everything that is involved in doing and keeping a job as a non-disabled person.³⁴

5.3.2 We recommend the Welsh Government works with employers via Business Wales and other partners to increase the level of awareness amongst employers of the duty to make reasonable adjustments.

³³ Is Wales Fairer 2023

³⁴ <https://www.equalityhumanrights.com/guidance/business/employing-people-workplace-adjustments?return-url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsearch%3Fkeys%3Dreasonable%2520adjustments%26page%3D1>

5.3.3 Not all reasonable adjustments are expensive and/or complex and it is not the case that disabled people will automatically have higher rates of sickness absence than non-disabled employees.

5.3.4 We note the Welsh Government operates flexible working from day one of employment and that the UK Government has committed in the Kings Speech 2024 as part of the Employment Rights Bill to “making flexible working the default from day-one for all workers, with employers required to accommodate this as far as is reasonable, to reflect the modern workplace”.³⁵

5.3.5 Flexible working can be used as an effective reasonable adjustment for some disabled people. However flexible working is a broad term and the Welsh and UK Governments should include job-sharing; hybrid and remote working as part of flexible working, rather than simply changing start and finish times.

5.3.6 We recommend the Welsh Government’s long-term ambition of around 30% of Welsh workers working from or near home on a regular basis³⁶ is monitored and evaluated for inclusivity across protected characteristic (PC) groups and that a range of flexible options are included in the strategy.

³⁵

https://assets.publishing.service.gov.uk/media/6697f5c10808eaf43b50d18e/The_King_s_Speech_2024_background_briefing_notes.pdf

³⁶ <https://www.gov.wales/remote-working-policy#:~:text=We%20would%20like%20to%20have,working%20can%20work%20for%20them.>

5.3.7 We note that Transport for Wales' (TfW) monitoring of this as part of a framework for measuring progress against the Wales Transport Strategy showed that in 2022/23 the target was exceeded with 34% of the workforce usually working remotely.³⁷ **We recommend the Welsh Government works with TfW to see how this data can be disaggregated by PCs.**

5.3.8 Delivered by Job Centre Plus, Access to work was “..set up to provide a grant to help towards the additional costs associated with barriers faced by a disabled person in work”. Work needs to be done to ensure that there is increased awareness of the support that Access to Work can provide, both for disabled people looking to enter the labour market, and for employers; as well as the benefits of reasonable adjustment passports.

5.4 Transport

5.4.1 The Welsh Government programme for Government 2021–2026 included a commitment to make the public transport system more accessible to disabled people. This sits alongside actions in Llwybr Newydd: the Wales Transport Strategy.³⁸

³⁷ <https://www.gov.wales/sites/default/files/publications/2024-07/welsh-government-annual-report-2024-annex.pdf>

³⁸ IWF 2023

5.4.2 For public transport to become accessible and inclusive, public bodies must develop and deliver actions that respond to the needs of older and disabled people. Our Accessible Public Transport for older and disabled people in Wales research shows that better consideration and integration of equality into transport strategies and policies, using the Wales specific duties as a guide, will ensure that public bodies meet the aims of the PSED, and build an accessible and inclusive public transport system in Wales.³⁹

5.4.3 We recommend the Welsh Government and other public bodies implement the recommendations in our report.

5.5 Social Partnership Council (SPC)

5.5.1 The Social Partnership and Public Procurement (Wales) Act established a procurement sub-group of the Council to specifically advise the Welsh Government on procurement.

5.5.2 We have consistently recommended that an equalities sub-group be established to provide advice to the Welsh Government on equality and human rights.

5.5.3 We reiterate our recommendation that the SPC establishes an equalities sub-group to advise the Welsh Government on equality and human rights, covering all PC groups, including disability.

6. What actions would support those who are currently unable to work to access voluntary opportunities (which could lead to future work opportunities).

³⁹ <https://www.equalityhumanrights.com/sites/default/files/2022/our-work-accessible-public-transport-older-and-disabled-people-wales-december-2020.pdf>

Not answered