

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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Ymateb gan: Yr Athro Debbie Foster | Response from: Professor Debbie Foster



Written evidence for the Equality and Social Justice Committee Inquiry into the Disability Employment and Payment gap

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Introduction

I wish to thank the Equality and Social Justice Committee for providing this opportunity to give evidence both written and oral on this topic. It is noted that the Committee issued 'Terms of Reference' for the Inquiry. Many of the topics included will be addressed in this submission, although some in greater depth than others. Other contributors will be able to provide more detailed evidence to the Committee in specialist areas.

The intention here is to provide an overview of the work that has been undertaken primarily by the Welsh Government's Disability Rights Taskforce (DRT), which was established to respond to the recommendations of the 'Locked Out Report' (2021). I was author of the co-produced Report and have had the privilege to Co-Chair the DRT (as chosen representative of the Disability Equality Forum (DEF) of Welsh Government), with the Minister(s) for Social Justice. As a Professor of Employment Relations and Diversity with a research interest in disability and employment at Cardiff University, I will also offer some brief reflections at the end of this written submission in this capacity.

Developments since the 'Locked-Out Report'

'Locked-out: Liberating Disabled People's Lives and Rights in Wales Beyond COVID-19' (Welsh Government 2021), known as the 'Locked-Out Report', was written and coproduced during the pandemic with a steering group of disabled representatives chosen by the DEF of Welsh Government. In many respects, however, the socio-economic and labour market problems faced by disabled people before the pandemic, which it argued were merely amplified by it, were the focus of its concerns. The Report referred to a 'long term persistent problem with employment' among disabled people, and a 'poor understanding of legal responsibilities to provide workplace adjustments' among employers and some disabled people.

The pandemic itself presented new challenges and opportunities for disabled people in the sphere of employment, most notably the potential to re-design and relocate work activities. For example, during the pandemic I was involved in research that examined the experiences of disabled people working in the legal profession of England and Wales forced to work from home, which has since reshaped working practices in that sector (Foster and Hirst, 2020b). During and immediately after the

pandemic, Wales appeared to be at the forefront of debate about the possible opportunities this change in working practices and attitudes towards remote working might bring. Several years on, it would be helpful to revisit these ambitions in depth to better understand whether the potential opportunities and benefits identified have been realised for disabled people.

The above themes were all discussed in the 'Employment and Income Working Group' of the Disability Rights Taskforce (DRT), which drew on the lived experiences of disabled people. To provide context a summary of how the Taskforce was established will be provided.

The DRT was established by the former First Minister Mark Drakeford in 2021. Part of the official Programme for Government it became fully operational by 2022, following the appointment of a secretariat of civil servants. It represents a significant investment by Welsh Government, not just of resources but also of ideas, in terms of developing a new more inclusive approach to policy formulation. To understand the significance of the latter it is important to understand the methodology and underlying philosophy of the DRT.

In a recent article (Foster, 2024, 411-12) the work and membership of the DRT and its relationship to the 'Locked-out' report is described. The DRT membership embraced "DPOs, Welsh Government policy leads, relevant external stakeholders (including some academics), and individual disabled people". Detailed work of the DRT has taken place in eight (later to become ten) working groups. "After some discussion it was agreed that these would, among other things, address key areas of policy identified by the 'Locked-out' Report. Working groups examine existing evidence, including the way policy is currently experienced by disabled people. Recommendations they draw up are then presented to a full Taskforce meeting, at which the relevant Minister holding that policy portfolio, is invited".

When the 'Locked-Out Report' was written, it was coproduced with a Steering Group of disabled people chosen by the Disability Equality Forum of Welsh Government. This provided a range of contributions from people with lived experience, most of whom had a wider understanding of the social model of disability and disabled people's human rights. As author of the report, I brought my experience as an academic researcher with lived experience to the process of writing a document that used secondary evidence-based research and primary evidence from the experiences of participants. The co-production of the report was important but so too was the perspective shared by participants that many of the problems disabled people face in society are essentially interrelated. When considering one barrier faced by disabled people - e.g. employment, therefore, it is necessary to consider other barriers - e.g. housing, transport, poverty, education, access to healthcare, social exclusion, discriminatory attitudes. Some barriers are physical, nevertheless, the Report argued, many are attitudinal and, therefore, socially constructed. This includes the historically low aspirations social policy makers have attributed to disabled people and their prospects for employment and careers.

"The pandemic represented a watershed moment that exposed the consequences of systemic social and health inequalities, prompting some politicians to argue that

unless groups that bore the brunt of deaths were part of the re-building process, lessons would not be learnt. The demand of the Disability Rights Movement – ‘Nothing About Us Without Us’ – began to gain traction (Foster, 2024:412) This was reflected in the what became the guiding principles of the Taskforce, namely: “adherence to a social model of disability; respect for human rights detailed in the UNCRDP (UN 2017); the value of lived experience; and co-production as a way of working” (ibid, 2024).

Since the ‘Locked-Out Report, it is significant that the United Nations (UN) has undertaken a formal investigation of the “disproportionately negative impact of austerity on disabled people in the UK.” The UN took the “decision to launch its formal investigation in 2016 under Article 6 of its Optional Protocol. Drawing attention to ‘the cumulative impact of the legislation, policies and measures adopted by the State party relating to social security schemes and to work and employment’ (UN 2017: 3), the UN feared the basic right of disabled people to live independently, was under threat.” (Foster, 2024: 413).

The Employment and Income Working Group of the DRT

One of the Working Groups of the DRT focused on Employment and Income. The Group, which met 5 times, consisted of Welsh Government policy officials, DPOs, third sector organisations, individual disabled people, representatives from public sector organisations (e.g. health and local government), Wales TUC, Business Wales, Disabled People’s Employment Champions, the EHRC, Bevan Foundation and other stakeholders. A focus group on employment was also organised to ensure that the views of disabled participants were properly documented. Employment and Income are policy areas that are strongly influenced by UK Government policy and, therefore, there are limitations on actions at a devolved level. Consideration had to be given to the role of UK Government, specifically in the areas of employment law and policy as well as Social Security.

A range of evidence-based presentations from external and Welsh Government contributors helped to stimulate debate in Working Group meetings. A flavour of some of the topics discussed is provided below:

- Disabled people’s experiences of employment and employment rights, access to advice, representation, justice, and dispute resolution.
- An evaluation of Welsh Government training and employment initiatives, which included contributions from disabled people who had experiences of participation.
- A consideration of in-work poverty, pay and career inequalities including discussions of the role of social security benefits and work; disability pay gap reporting; the need for well supported opportunities for flexible and remote working; job re-design/ job carving; the role of volunteering.

- Disabled people's poor access to good quality jobs; low aspirational stereotyping; problems related to staying in work.
- Discussion of the UK Government's 'Disability Confident' scheme. While it was acknowledged that an employer scheme is needed, concern was expressed about current benchmarks in the scheme and inadequate scrutiny and accreditation of participating employers. The current scheme's association with the Department for Work and Pensions was also viewed as problematic by many disabled people. There was debate about whether an employers' kitemark for Wales might replace or complement any reformed UK scheme.
- The important role of the public sector as a large employer in Wales was discussed and the need to ensure that Public Sector Equality Duties, as well as the very distinctive Welsh tradition of social partnership could be better utilised to improve the employment of disabled people in this sector.
- The positive role played by the Disabled People's Employment Champions.
- The potential benefits of a disabled persons 'Universal Basic Income' were explored with speakers from Sheffield University.
- The cost-of-living crisis and the potential for Wales to co-ordinate and strengthen its own Welfare strategy were explored with a speaker from the Bevan Foundation.
- How to embed the Social Model of Disability into the activities of Welsh Government and the potential to do so through public procurement standards. As well as the wider potential role of the Social Partnership and Public Procurement Act to advance equalities.

Outcomes from the DRT Employment and Income (E&I) Working Group

A range of suggested recommendations were put forward by the E&I Working Group for consideration by the full DRT and Minister holding the relevant portfolio, which at that time was Vaughan Gething. My understanding is that these are currently being reviewed and will need to be discussed by Cabinet before a decision can be made about whether they can become part of a proposed 10 year Disability Action Plan for Wales that would then go out for public consultation. The full and final recommendations are not yet in the public domain. The summary below, however, outlines many key areas considered:

- a) **The need for a campaign or public conversation in Wales** to raise awareness of the social model of disability, disabled people's employment rights, challenge limiting stereotypes, and build positive relationships with employers. It was felt that too often those the law is intended to protect are unaware that they have rights or, are unable to access support to exercise them. The consequence is that disabled people often feel compelled to exit the labour market because they cannot secure relevant reasonable adjustments. This loss of talent, experience, and skills represents a failure in the operation of law.

It was recognised that Wales needs a sustainable approach to work that takes account of changes throughout the life-course. Work can provide economic independence, reduce social isolation, and improve well-being, but only if accompanied by good working conditions. Strengthening education and accountability is required to improve the poor provision of legal advice in Wales to enable disabled people to access their rights (Articles 12 & 13 of the UNCRDP).

- b) **Reform or replacement of the current UK Disability Confident scheme** to address a lack of confidence among disabled people and employers in the current scheme. Subsequently, a piece of research is being co-produced involving Chairs of the DRT and Welsh Government Social Researchers, which is considering the feasibility of potential reforms to the scheme with key stakeholders. It was felt that any reform to the scheme should attempt to incorporate and celebrate distinctive Welsh values of social partnership, fair and decent work (Article 27 CRDP), commitment to a real living wage, and well-being. A reformed scheme could be a vehicle for providing education, training, and developing good employment practice. Currently, only 40 employers in Wales have achieved Disability Confident Leadership status, just 12 in the private sector.
- c) **The need for better representation of disabled people's interests in the application of the Social Partnership and Public Procurement of Wales Act.** Public procurement was identified as a potential lever for change and a means of embedding positive employment practices for disabled people and others with protected characteristics in Welsh Government contracts. For example, contractors might be obliged to demonstrate they have effective procedures to deal with reasonable adjustment requests, report disability employment data, procedures for recruiting and retaining disabled employees. Demonstrating good **dispute resolution procedures** to address grievances might also be a requirement. Too often non-disclosure agreements conditional on disabled employees exiting organisations, which also serve to hide the extent of the problems disabled people face, are used by employers.
- d) **Proactively Equality Impact Assess (EIA) procurement decisions co-productively.** Audit Wales has questioned whether EIAs had become 'tick

box' exercises. EIAs and the Public Sector Equality Duty must be used not only for 'eliminating discrimination' but to address the broader aims of 'promoting equality' and 'fostering good relations'

- e) **Ensuring that disabled people are prioritised in relation to flexible working arrangements.** It is poorly understood that disabled people occupy a different status in employment law. Disabled workers should always be treated differently, and it is often lawful to treat a disabled person more favourably than a non-disabled person. Employers and disabled employees need to be better supported to understand the law. The role of Employment Champions and Business Wales could be instrumental here.

Opportunities to work remotely and from home post-pandemic have provided some new employment opportunities for disabled people. Further detailed analysis is, however, required to understand to what extent potential has been realised and continued barriers. It was hoped that remote or homeworking would become an accepted reasonable adjustment. Concern was also expressed that homeworking must be supported, safe, and suitable. The choice not to work from home is essential because the home is not always a safe environment and concerns were expressed that revised DWP work capability assessments threatened this. Homeworking must never be used as a justification for failing to improve the accessibility of public workplaces, transport systems, or wider infrastructure.

- f) **Employment retention** is a dimension of the disability employment gap that is often overlooked. More data is needed on what steps employers are taking to retain disabled people in their workforces. In addition, proactive measures such as flexible working arrangements; redeployment; retraining; mentoring; creative job re-design/ job carving and case studies of where these have been successful, need developing.
- g) **Transitioning from Education to Employment** - The 'Inclusive Apprenticeships: Disability Action Plan for Apprenticeships 2018-21' recognised that too few disabled people are accessing apprenticeships and identified employers being insufficiently aware of the support available to them if they take on a disabled apprentice. A thorough evaluation of the objectives and impact of this Action Plan is needed, and a group established to build on its achievements and coproduce a strategy with disabled people for the next 10 years.

Other Welsh Government initiatives involving young people wanting to access work, such as 'Engage to Change' were discussed. It was, however, believed such schemes needed longer term funding to ensure existing programmes are maintained and future initiatives such as a Mentors and Ambassadors programme and a National Job Coaching model, are developed.

More tailored support is needed for disabled people wanting to return to education and training, some of whom may have fragmented education and employment histories. A distinctive 'disabled returners pathway' could be developed to allow for confidence and CV building. It was recommended that Welsh Government work with Further and Higher education institutions in Wales to establish appropriate pathways to re-skill and up-skill disabled people. A Welsh specific intervention is needed. This should not just be viewed as the responsibility of the UK Department of Health and Social Security.

- h) **An 'Anti-Ableism Network'** was discussed for **Welsh further and higher education sectors** to challenge stereotypes and monitor educational needs, provision, and achievements of disabled people and address their under-representation among staff in these sectors. The Network could also share good practice, collecting data on the disability pay gap and be responsible for promoting an anti-ableist culture in post-16 education. With a duty to report to Welsh Government and measure its progress annually, it was suggested the Network also develop the first Disability Equality Chartermark in the UK further and higher education, (to be co-produced with DPOs and groups/ organisations representing staff and students).
- a) **Self-Employment, Entrepreneurship and Freelancers.** Discrimination can force disabled people out of the labour market into self-employment, however, others make a positive choice to become self-employed or become freelance workers. Both situations can involve challenges. Better awareness of the support available to disabled people through Business Wales is needed. Business Wales reported that engaging with disabled people remains problematic. More coproduced research is needed in this area to address the reasons why.

Business Wales and Welsh Government Relationship Managers and Disabled People's Employment Champions have an important role to play in encouraging and promoting conversations with businesses on how to adopt and promote the Social Model of Disability in their organisations and employment practices. Social Model of Disability training is available through Business Wales and further engagement with DPOs might provide further tailored advice and training involving people with a range of lived experiences.

It was suggested that Business Wales consider developing a Disability Employer Hub, providing a central portal of advice, guidance, resources, and examples to support employers to employ disabled people. The Hub might signpost other support programmes and funding schemes, and should reflect the full pathway of recruiting, retaining, and supporting disabled employees of all ages, including those who become disabled while in the workforce. The content of this hub might be co-produced with disabled people and regularly reviewed/updated.

Discussions highlighted how freelancers as a distinctive group are poorly understood and their specific needs are often overlooked. Disabled people in the creative industries who play an important role in challenging stereotypes, for example, reported barriers including inaccessible venues, absence of procedures to reasonable adjustments and a benefits system that does not support short-term, unpredictable periods of work. Many public spaces like theatres and music venues, are insufficiently accessible and the status of disabled freelancers as self-employed, often mean their needs are overlooked and they find it difficult to access legal rights and work.

It was noted that freelancing as an employment status required better recognition and consideration within co-produced 'Fair Work' principles. More data is also needed to gain a better understanding of the number of disabled people in this group and how freelancing fits into debates about our understanding of disability pay and poverty gaps. Furthermore, freelancing requires greater recognition as a positive choice by some disabled people rather than negatively as casualisation.

i) Income

While acknowledging that Welsh Government has limited powers to act in areas of social security, it has however, introduced policies and discretionary payments to alleviate disadvantage. It also plays an important role in collecting data and evaluating the socio-economic circumstances of Welsh citizens, as well as lobbying for change in UK Government policy.

More and better data was identified as the basis for understanding how gender pay gap reporting has affected employer behaviour in Wales, so that positive benefits can be extended to include pay gap reporting on disability and ethnicity. (<https://www.equalityhumanrights.com/en/publication-download/measuring-and-reporting-disability-and-ethnicity-pay-gaps>).

The Working Group also identified a need for comprehensive publicly available data on the recruitment, retention, and progression of disabled people in Welsh organisations. The group discussed how Welsh Government might consider introducing a positive duty that requires employing organisations to track and report such data as part of its review of specific duties for Wales. This would include a requirement for public authorities to publish their analysis of why gaps exist and be required to set in place action plans to reduce them. By providing formal oversight of this process Welsh Government might adopt a leadership role, one that is compatible with its objective to place socio-economic disadvantage at the centre of strategic decision-making.

The introduction of a Basic Income (universal or otherwise) for disabled people was discussed. Potential benefits to disabled people might include improved access to education and training, as well as supporting disabled people in volunteering experiences. By providing a safety-net during disruptions in employment caused by ill-health, treatment, rehabilitation, or the

need to implement reasonable adjustments, a basic income could contribute to job retention and reduce the administrative costs associated with means-tested benefits. For the many disabled people in precarious forms of employment, a guaranteed basic income would also free them from a frustrating and often punitive social security system that can in some circumstances penalise them for working. Furthermore, disabled people unable to work at all would have a security of income to help them to live more independently and with dignity. Welsh Government are uniquely placed to apply learning from its current Basic Income Pilot to disabled people. It was, therefore, suggested when evaluating the current pilot (scheduled for 2026), it conducts a feasibility study and cost-benefit analysis of its application to this group.

The Working Group welcomed the Bevan Foundations presentation about proposals for a Welsh Benefits Charter, which Welsh Government have subsequently developed further. The commitment to use the Social Model of Disability in the design and delivery of Welsh Benefits is positive.

Additional Reflections

There was limited evidence from the participation of disabled people in the DRT to suggest that the social model of disability was being used to underpin employment and recruitment practices. My wider academic research would support this and suggests that existing law does not encourage this. The very concept of 'reasonable adjustments' encourages employers to adopt a defensive and reactive position, which is at odds with the social model of disability (Foster and Scott, 2015). The expectation that an employer will need to 'adjust' its practices inevitably conceptualises disabled people as 'other' and different from the 'norm'. The use of the concept of an 'ideal worker' in recruitment practices and job design thus continues to prevail and is based on ableist assumptions (see Foster and Wass, 2013).

It is often not appreciated, moreover, that the act of having to request an adjustment as a disabled person, places too much responsibility on individual employees in what is already an unequal power relationship: the employment contract (Foster and Fosh, 2010). Add to this the reluctance of many people who might benefit from workplace adjustments to self-identify as disabled because it is regarded as a stigmatised identity, and it suggests the law alone cannot deliver fair employment opportunities for disabled people.

The two critical questions that employment policy needs to address if the labour market opportunities of disabled people are to be improve are: how to get disabled people who are able, into work? Then, how to support them to stay in work. Historically, Governments have focused on the former to the detriment of the latter and see 'any work', however low aspirational, as suitable rather than focusing on developing flexible long term career opportunities. If this means benefits and grants are required to support disabled people through these different stages, this implies

that policymakers may need to think differently. For example, encouraging people to volunteer used to be encouraged by the benefits system but these opportunities have diminished. These opportunities might offer a pathway to paid employment but in themselves were valuable to the individual and to voluntary organisations.

In terms of paid employment, disabled people participating in the DRT consistently referred to a poor understanding of the realities of being a disabled person and lack of flexibility on the part of employers/ organisations. Many disabled people manage different levels of pain and fatigue in their daily lives, often caused by having to negotiate an ableist society. This can mean they experience fluctuating energy. Being able to manage the location of work can be important (e.g. having hybrid and home working options) but also having access to other flexible working arrangements and mentoring/ informed support.

A recurrent problem raised by disabled people participating in the DRT was the slow response of Access to Work, particularly since the pandemic. In terms of eventual outcomes, satisfaction with this service is generally high but criticisms that it is bureaucratic and slow in delivering essential equipment, widespread. Access to Work is essentially a *reactive* service and only supports disabled people who have already secured employment, not those undergoing recruitment processes or volunteering as a step towards getting back into paid employment. Research into the legal profession (Foster and Hirst, 2020a; 2022) found Access to Work services were also poorly understood by private sector employers and among self-employed disabled people.

Because of time and space in this written submission there are limitations on what I have included. Having conducted extensive academic research on disabled people and employment over many years I am happy to further discuss findings with members of the Committee. The intention here has been to primarily concentrate on aspects of the work I have been engaged in with Welsh Government.

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