A submission to the Taylor Review on Modern Employment Practices

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This submission contributes towards the following question asked by the Taylor Review: "How can we harness modern employment to create opportunities for groups currently under represented in the labour market (the elderly, those with disabilities or care responsibilities)?" It focuses specifically on disability, drawing on our published academic research over the past decade that has sought to explore effective regulation of the labour market and the promotion of disabled people's employment.

1. Introduction

1.1 It is well established that disabled individuals are disadvantaged in terms of employment opportunities and treatment at work, and that this disadvantage is extensive and enduring (ILO, 2009; OECD, 2010). In the UK, the disability employment gap exceeds 30 percentage points (Jones & Wass, 2013) while the disability wage gap for physical and mental health is estimated to be 14 and 30 percent respectively (Longhi et al., 2012). Disabled people are overrepresented in low-skilled and low-status jobs (Riddell et al., 2010), are paid almost one pound per hour less than the non-disabled (Riddell et al., 2010), have poorer access to career progression and training opportunities and are more likely to work in jobs for which they are overqualified (Meager and Higgins, 2011). Disabled employees also report lower work-related well-being than their non-disabled counterparts on measures such as job satisfaction and unfair treatment (Fevre et al., 2013; Jones, 2016; Schur et al., 2009).

1.2 In considering how the employment disadvantage that disabled people experience might be addressed, we focus on three types of modern employment practice: High Performance Work Practices (HPWPs); modern forms of union representation (in particular Equality Reps and Disability Champions); and voluntary approaches to labour market regulation (in particular the Two Ticks and Disability Confident schemes). Each of these is assessed in terms of their impact on disabled people's employment opportunities and working conditions. A number of research-based recommendations is subsequently offered.

2. Modern employment practices: High Performance Work Practices and Disability Equality Practices

2.1 High Performance Work Practices (HPWPs) are an inherent element of the modern workplace and have been heavily promoted by the government in its efforts to encourage employers to adopt management practices that enhance productivity. Such HPWPs include: competency testing; performance appraisal; individual performance-related pay (IPRP); team-working and functional flexibility.

2.2 Little is known of the impact of these practices on disabled people. Our research (Hoque et al., 2017) argues that HPWPs could have enabling effects that create opportunities for disabled people. For example, HPWPs such as competency tests, performance appraisals and IPRP may enable disabled people to be selected, assessed and rewarded in a fair and impartial manner and not on the basis of stereotype; while HPWPs such as team-working and functional flexibility provide disabled people with autonomy over how they perform job tasks, thus enabling them to shape their jobs in line with their capabilities. However, HPWPs may also have disabling effects that form barriers for disabled people. For example, it may be hard for disabled applicants to perform well in competency tests, performance appraisals and IPRP systems if they are assessed on their ability to 'fit in' with standard organisational norms, or a standard job description that contains assumptions about the ideal way in which job tasks should be performed. Where team-working and functional flexibility are concerned, these can arguably present problems for disabled employees if everyone in the team is expected to perform a wide range of job roles, as and when required.

2.3 Our research assesses these competing enabling/ disabling effects by exploring the association between the adoption of HPWPs and a) the proportion of the workforce that is disabled and b) differences in work-related well-being (perceptions of job satisfaction, fairness and anxiety-contentment) reported by disabled and non-disabled workers. The analysis uses nationally-representative linked employer-employee data from the 2011 Workplace Employment Relations Study (WERS), which comprises 2,680 workplaces and 21,981 employee responses.

2.4 The results show that workplaces using multiple HPWPs employ proportionately fewer disabled people than workplaces making less use of such practices. This suggests that HPWPs may generate previously unrecognized and inadvertent forms of discrimination against disabled people. In addition, disabled employees report poorer job satisfaction and lower levels of fairness at work, and score more poorly on anxiety-contentment than non-disabled employees. However, there is no evidence that these disability gaps are any different in workplaces with HPWPs than in workplaces without them. This suggests a 'selection effect' argument, whereby disabled people may find it harder to get into/ remain in workplaces with HPWPs, but those that do tend not to have the sorts of activity restrictions that might be particularly compromising in such environments.

2.5 Our analysis also shows that workplaces using multiple HPWPs do not employ proportionately fewer disabled people in instances where a broader set of disability equality practices has also been adopted. In such instances, it is more likely that HPWPs such as competency tests, performance appraisals and IPRP will be monitored and reviewed to ensure they do not discriminate against disabled people, and that managers will be sensitised to the potentially inadvertent or unintended disabling effects of these practices. Where team-working and functional flexibility are concerned, it might be anticipated that managers will be trained and socialised to ensure that job design does not inadvertently disadvantage disabled employees and that reasonable adjustments are made.

2.6 Our research therefore highlights the importance of a broader culture of equality (as demonstrated by the adoption of substantive disability equality practices) in alleviating the negative impact that HPWPs can have on disabled people's ability to get into and remain in workplaces with modern employment practices.

2.7 On the basis of our research findings, we recommend the following:

Recommendation 1: Awareness needs to be raised among managers that HPWPs may have inadvertent, negative unintended consequences for the recruitment and/or retention of disabled people, even if these HPWPs are applied to the whole workforce in an apparently neutral manner. This is important given that the proportion of employers adopting HPWPs has increased in recent years (van Wanrooy et al., 2013). The government has an incentive to take a lead in this awareness-raising exercise given the emphasis it is currently placing on reducing the disability employment gap.

Recommendation 2: HPWPs may have particularly deleterious effects on the employment of disabled people with more serious activity restrictions. Efforts need to be made to increase managers' awareness of this, and to seek ways in which jobs can be adjusted to enable **all** disabled people, not just those with more mild activity restrictions, to function effectively in modern workplaces with HPWPs.

Recommendation 3: HPWPs should be used in conjunction with a range of high quality disability equality practices to ensure they do not have negative employment implications for disabled people. However, there is evidence to suggest that although there is a reasonably widespread uptake of formal, written Equal Opportunities (EO) policies in Britain, many of those policies constitute little more than 'empty shells' that lack substantive EO practices (Hoque & Noon, 2004). The results therefore highlight the need for the government to encourage the wider adoption of substantive disability equality policies to help ensure HPWPs are implemented in a manner that does not negatively affect the recruitment and/or retention of disabled people in modern workplaces.

3. Modern forms of representation and voice for groups currently under represented in the labour market

3.1 As suggested above, a growing literature identifies empirically the importance of EO practices for increasing the proportion of disabled employees in the workplace, disabled employees' relative wages and disabled employees' perceptions of fair treatment by management (see Hoque et al. 2017). Although four in five workplaces have an EO policy, many are 'empty shells' that lack substantive practices to deliver equality commitments (Hoque & Noon 2004). In a large majority of workplaces, managers do not monitor or review recruitment and selection, promotion or pay rates by disability. Analysis of the WERS 2011 suggests that only 10 per cent of workplaces use a wide range of disability equality practices (Hoque et al. 2017), with the adoption of

substantive equality practices appearing to have declined between the WERS 2004 and 2011. Furthermore, in WERS 2011 only eight percent of workplaces have special procedures to attract job applications from disabled people and only one third of workplaces had a plan with targets to increase diversity. This has not increased since the WERS 2004. More employers need to adopt substantive EO practices to deliver on their equality commitments and create opportunities for groups currently under represented in the labour market.

3.2 One route by which the government might increase these forms of support for disabled people is by encouraging joint regulation of equality and by supporting the role of unions in engendering better disability equality practice (All Party Parliamentary Group on Disability 2017). Our research shows that workplace representation by trade unions is positively associated with employer adoption of EO practices, and that unions offer an important source of support and advice to employees who are disabled or become disabled. The adoption of equal opportunity practices is greater in unionised workplaces particularly where negotiation and consultation over equality issues takes place (Hoque & Bacon 2014).

3.3 In seeking to promote equality further, trade unions have also developed new types of workplace representatives, having recruited and trained equality representatives and disability champions in recent years. Our research suggests that these new forms of union representation can have significant positive effects for the employment of disabled people but that they require more statutory support.

3.4 The role of union equality representatives in the modern workplace is to help promote equality and fairness by: encouraging employers to improve EO policies and practices; offering independent advice and guidance on equality issues and rights to employees; raising the profile of the equality agenda within their unions. More than three-fifths of equality representatives report having a positive impact on their employer's EO practices with regard to disability (Bacon & Hoque 2012). Their impact does not vary between the public and private sectors, between small and medium-sized enterprises (SMEs) and large organisations or between industry sectors. However, their impact is dependent on them having at least five hours or more per week to spend on their equality representative role, and having regular contact with management (for example, via attendance at equality committees). The research also shows that they are better able to influence employer disability practice positively in instances where negotiation over equality takes place.

3.5 Disability champions are a further new type of lay workplace trade union activist, whose role is to encourage employers to audit and improve disability policies and offer independent advice and guidance on disability issues to employees. Our research has shown that the majority of disability champions have a positive impact on the opportunities of disabled people in work, specifically on employer willingness to conduct disability audits and to amend and improve employer EO practices with regard to disability (Bacon & Hoque, 2015). Similar to equality representatives, disability champions report greater influence where they are able to spend at least five hours a

week on the role and regularly attend an equality/disability committee, and where they have represented disabled employees suffering discrimination and harassment. As for equality representatives, our research also shows that disability champions are better able to influence employer disability practice positively in instances where negotiation over equality takes place.

3.6 Although our research shows that the effectiveness of both equality representatives and disability champions depends on them having sufficient facility time to conduct their role, they lack statutory rights to time off such as those afforded to union learning representatives. The amount of time they are able to spend on the role might however, become further restricted in the public sector, given that the *Trade Union Act 2016* provides ministers of state with reserve powers to restrict public sector facility time. If this affects the work of equality representatives and disability champions, this will restrict the voice of disabled employees in the modern workplace and have the potential to limit their opportunities in the labour market.

3.7 Based upon the evidence presented in this section we offer the following recommendations:

Recommendation 4: Encouraging union recognition and requiring employers to negotiate or consult with unions on equality issues is a useful approach to increase the type of EO practices that are likely to help raise disability employment rates in the modern workplace.

Recommendation 5: Union equality representatives and disability champions play an important role in improving workplace disability equality practices. They should be provided with statutory rights to time off for their role equivalent to those provided to union learning representatives.

Recommendation 6: The reserve powers to restrict facility time in the *Trade Union Act 2016* should not be enacted as this will hinder attempts by unions in the public sector to represent groups that are currently under-represented in the labour market, and ultimately limit disabled people's employment prospects and working conditions.

4. Voluntary regulation: the lessons from Two Ticks and Disability Confident

4.1 The government's current policy approach in many areas of modern employment is to place considerable emphasis on voluntary standards. For example, with regard to increasing employment opportunities for disabled people, it has encouraged employers to adopt the Disability Confident and formerly, the Two Ticks 'Positive About Disabled People' symbol. However, our research shows that employers are unwilling to sign up to voluntary standards in sufficient numbers, and that the firms that do sign up do not always deliver the changes required to help disadvantaged groups. As such we suggest that voluntary standards are unlikely to offer effective forms of regulation in the modern workplace.

4.2 In terms of the number of employers that have signed up to the Two Ticks and Disability Confident schemes, only 4,006 employers were identified as having been awarded the Two Ticks symbol over a 22 year period (1990 to 2012). Of these, only 48 per cent were in the for-profit private sector and 30 per cent in the voluntary sector, with the remaining 22 per cent being in the public sector (Bacon & Hoque 2016a, b). Looking in more detail at the private sector, only 1,908 private sector workplaces were awarded Two Ticks, and many of these were multiple workplaces of the same employer. In terms of the overall proportion of private sector employers that have Two Ticks, we estimate that a maximum of 0.24 per cent of private sector businesses with employees have the award. The majority of these are SMEs that provide services to disabled people. In these cases, adoption of the symbol might be seen more as a reflection of a general commitment to providing disability services, rather than as a commitment to directly employ disabled people in greater numbers. Relatively few workplaces within large public limited companies adopted Two Ticks (426 workplaces, equivalent to 11 per cent of all Two Ticks awards). This is worrying given that voluntary standards will only have a significant positive effect if large private sector firms employing large numbers of people can be encouraged to engage with them.

4.3 Given government-backing for the Two Ticks scheme, it is surprising that uptake among public sector organisations remained low. Despite the public sector equality duty (PSED), almost two-thirds of NHS organisations and just over one-third of local authorities did not adopt Two Ticks. It cannot therefore be assumed that voluntary standards, as recently promoted by the government, will be effective in helping to protect the modern workforce in either the public or the private sector.

4.4 A similar lack of employer engagement is evident in the Disability Confident scheme. Only 124 organisations were listed on the Disability Confident website as of 18 April 2016, almost three years after it officially launched in July 2013. Almost one third (39 in total) of organisations with Disability Confident were charities or social enterprises that do not employ large numbers of people (Bacon & Hoque 2016a, b). Private limited companies made up only 29 per cent of all organisations with Disability Confident, and these were predominantly medium-sized organisations with an average of 118 employees and they employed only 4,249 employees overall. Many of these offered disability consultancy services to employers or disabled people, with several providing government funded welfare to work and skills training programmes. As such, most employers in this group appear interested in membership of the Disability Confident scheme for public relations reasons or for the reputational benefits of being a member. In terms of the proportion of the total workforce covered by Disability Confident, we estimate that Disability Confident organisations employed a combined total of 886,255 people in the UK in April 2016. This represents just 2.8 per cent of the 31.41 million people in work at that time. Given that employers appear to continue to find voluntary schemes unattractive, this suggests there may be a case for more direct regulation to compel employers to improve their disability practices.

4.5 In response to the lack of employer engagement, Disability Confident was relaunched in November 2016 with three levels: level 1 Disability Confident 'committed' employers requiring no assessment; level 2 Disability Confident 'employers' that self-assess; level 3 'leaders' that require a validated assessment (which may be conducted by other level 3 organisations). Uptake increased as the Department for Work and Pensions migrated all Two Ticks employers into the level 2 category. As a result, the number of Disability Confident organisations increased to 3,945, composed of 1,002 'committed' employers (level 1), 2,921 'Disability Confident' employers (level 2) and 24 'leaders' (level 3). As with Two Ticks, Disability Confident has suffered from limited employer engagement particularly where large corporates are concerned. For example, within the 'leaders' group, four are central government departments, two are other public sector organisations, and 17 are mainly not-for-profit SMEs and social enterprises providing services for disabled people. KPMG Group is the single large corporate (a major client of government contracts).

4.6 In addition to requiring significant uptake by employers, voluntary schemes such as Two Ticks and Disability Confident will only help increase the proportion of disabled people in employment if employers who sign-up fulfil their commitment to employ disabled people in greater numbers. The Two Ticks symbol expects employers who have signed-up to adhere to five specific commitments regarding the way they treat disabled job applicants and employees. However, our research has found only limited adherence to these commitments, with 18 per cent of Two Ticks workplaces adhering to none of them. Furthermore, adherence is no higher in Two Ticks than non-Two Ticks workplaces (Hoque et al. 2014), suggesting employers with Two Ticks are no more committed to employing disabled people than employers without it. It is likely that this is in part attributable to the lack of independent monitoring to review whether employers are meeting the commitments they are expected to uphold. Although the revamped Disability Confident standard requires its level 3 'leaders' to be audited, this auditing may be conducted by other 'leaders' and not necessarily by an independent body. It remains to be seen, therefore, whether employers adopting the Disability Confident scheme will adhere to the necessary commitments, although evidence from the assessment of Two Ticks suggests that adherence to Disability Confident is unlikely to be high.

4.7 We offer the following recommendations with regard to the use of voluntary regulation regarding the employment of disabled people in the modern workplace.

Recommendation 7: Two Ticks or Disability Confident should not, in their current guise, be promoted as routes by which the employment opportunities of disabled people might be increased in the modern workplace, given the evidence concerning their limited uptake and impact.

Recommendation 8: If Disability Confident is to be retained (or other voluntary standards developed), it is essential that accredited employers are monitored rigorously and independently to ensure adherence to the expected commitments and delivery of greater employment opportunities for disabled people.

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