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**RESPONSE TO THE UK GOVERNMENT'S REFORMS OF DISABILITY
CONFIDENT LEVEL 3**

**Kim Hoque, Warwick Business School
Nick Bacon, Cass Business School**

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The UK government views Disability Confident as an important tool in encouraging employers to adopt a best practice approach towards the management of disabled job seekers and employees, thereby boosting labour market outcomes for disabled people.¹ However, Disability Confident (and its 'Two Ticks' predecessor scheme) have been criticised as requiring relatively little of employers, and of doing little to increase the number of disabled people in employment.²

It may therefore be regarded as a positive step that the government has announced a recent strengthening of the scheme. In a press release in November 2019, the DWP announced new requirements for employers at Disability Confident level 3 to ensure they have disabled people on their payroll, and also to report on their disability employment using the framework for *Voluntary Reporting on Disability, Mental Health and Wellbeing*.³ Notwithstanding the lack of empirical support to justify the headline of the press release ('Disability Confident scheme leads to inclusive workforce'), we argue that the changes announced do not go far enough, and there are a number of ways in which Disability Confident should be further strengthened.

In what follows, we consider: 1) the further reforms that are required; 2) the extent of employer engagement with Disability Confident (both at level 3 and more generally); and 3) the need to look beyond Disability Confident in improving labour market outcomes for disabled people.

1. The further reforms required to Disability Confident

There are a number of ways in which the government's proposals should be developed and extended to bolster the scope for Disability Confident to improve labour market outcomes for disabled people. These relate to: mandatory disability employment reporting; measurement; and benchmarking.

a) Mandatory disability employment reporting As outlined above, employers at Disability Confident level 3 will be required to report publicly on their disability employment using the framework for *Voluntary Reporting on Disability, Mental Health and Wellbeing*.⁴ This framework requires employers to provide a narrative to explain the

¹ <https://disabilityconfident.campaign.gov.uk/>

² <https://www.disabilityatwork.co.uk/wp-content/uploads/2019/02/Disability@Work-Two-Ticks-Briefing-Paper-4.pdf>

³ <https://www.gov.uk/government/news/disability-confident-scheme-leads-to-inclusive-workforce>

⁴ <https://www.gov.uk/government/publications/voluntary-reporting-on-disability-mental-health-and-wellbeing/voluntary-reporting-on-disability-mental-health-and-wellbeing-a-framework-to-support-employers-to-voluntarily-report-on-disability-mental-health-an>

activities in their organisation in relation to the recruitment and retention of disabled people. It also suggests they report, where possible, the percentage of individuals within their organisation who consider themselves to be disabled or have a long term physical or mental health condition.

In our view it is not sufficient to merely suggest Disability Confident level 3 employers report, where possible, the percentage of their workforce that is disabled. Instead, this should be a mandatory requirement, and we would also recommend it is extended to level 2 employers. This is in line with the government’s own argument within the voluntary reporting framework that transparency and disability employment reporting are effective in helping employers access a wider pool of talent and skills, thereby improving productivity and organisational performance, and building a more inclusive society. As well as reporting the overall proportion of the workforce that is disabled, Disability Confident level 2 and 3 employers should also be required to report the percentage of disabled employees in each pay quartile. This will help organisations identify the clustering of disabled people at lower hierarchical levels and encourage action plans to address this, thus helping address social inequality.

Mandatory reporting of the percentage of the workforce that is disabled would not result in unreasonable additional costs for employers as a whole. The voluntary reporting framework advises employers to collect data on the number of disabled employees in their workforce using either HR records or anonymous staff surveys. As Table 1 demonstrates, the government’s nationally representative 2011 Workplace Employment Relations Study⁵ shows that 62 per cent of organisations with 250 or more employees already run staff surveys, to which a question on the employee’s disability status could be added (if not already included). Even where organisations with 50-249 employees are concerned, 43 per cent run staff surveys.

Table 1: Use of Staff Surveys

Organisation size (employees)	%
5-49	17.6
50-249	43.1
250-499	43.6
500-999	43.2
1,000-4,999	66.1
5,000-9,999	57.7
10,000+	72.7
<i>250 or more employees</i>	<i>62.2</i>

Data from the Workplace Employment Relations Study, 2011. Weighted percentages given.

b) Measurement Changes are required to the recommended question in the voluntary reporting framework the government encourages Disability Confident level 3 employers to use when reporting the proportion of their workforce that is disabled. The recommended question is: ‘Do you consider yourself to have a disability or long term health condition (mental health and/or physical health)?’. This question is not aligned to the Equality Act definition of disability or the Government Statistical Service’s harmonised disability measure. Alignment is important because slight changes in the wording of the question produce markedly different results. Hence, the recommended question will not enable

⁵ Department for Business, Innovation and Skills, Advisory Conciliation and Arbitration Service, National Institute of Economic and Social Research (2015). Workplace Employee Relations Survey, 2011. [data collection]. 6th Edition. UK Data Service. SN: 7226, <http://dx.doi.org/10.5255/UKDA-SN-7226-7>

employers to benchmark themselves accurately against nationally representative data to assess how they compare against national, regional or industry averages.⁶

We argue that a measure based on the question in the Labour Force Survey (LFS) should be used. The LFS asks respondents: ‘Do you have any physical or mental health conditions or illnesses lasting or expecting to last 12 months or more?’. If respondents answer in the affirmative, they are asked the follow-up question: ‘Does your condition or illness reduce your ability to carry out day-to-day activities?’ (Yes, a lot; Yes, a little; Not at all). Respondents answering ‘Yes, a little’ or ‘Yes, a lot’ are defined as disabled. By using a measure based on this question, which is in line with the Equality Act definition of disability, it would be possible to benchmark employers against national and industry averages derived from the LFS itself.

We thus propose the DWP’s expert group should be reconvened, and that it should work with employers, disabled people’s organisations, the Government Statistical Service and academic experts to revise the recommended question within the voluntary reporting framework. This is in line with recommendations made in 2018 by the EHRC. Once a question has been agreed upon, if Disability Confident level 2 and 3 employers deviate from this, their Disability Confident status should be withdrawn.

- c) **Benchmarking:** Previous research has suggested it is unlikely the proportion of employees that are disabled is any higher in Disability Confident than non-Disability Confident organisations.⁷ Level 3 employers are recognised by government as leaders in disability employment, hence they should be required to ensure the percentage of disabled people within their workforce is substantially above the UK average. They should also have an above average proportion of their disabled workforce in the higher pay quartiles. Level 2 employers should be required to ensure the proportion of their workforce that is disabled, and the proportion of employees in higher pay quartiles, are at least equivalent to the UK average. This assessment will require Disability Confident level 2 and 3 employers to measure disability employment in a standardised manner using the harmonised measure, as discussed above (hence our recommendation that once a question has been decided, employers should not be allowed to deviate from it).

Average or above average benchmarked outcomes should therefore be the key criteria for level 2 and 3 awards. Currently, validation concentrates on practices rather than outcomes,⁸ and there is no evidence that level 2 and 3 employers are any more likely to hire and retain disabled people than other organisations (including those that have not engaged with Disability Confident whatsoever). This is damaging as it misleads disabled job seekers who may apply to these organisations in the expectation of a greater chance of being hired, and rewards employers for public declarations of intention rather than for delivering outcomes.

As such, the government should remove level 2 and 3 status from employers who persistently employ a below average percentage of disabled people. They should also remove it from employers who persistently employ a higher than average proportion of disabled people within lower pay quartiles, unless the employer can provide a valid reason for this. Such sanctions are important to maintain the credibility of the scheme.

⁶ <https://www.disabilityatwork.co.uk/wp-content/uploads/2018/10/Disability@Work-Defining-disability-in-Government-Surveys-August-2018.pdf>

⁷ <https://www.disabilityatwork.co.uk/wp-content/uploads/2019/02/Disability@Work-Two-Ticks-Briefing-Paper-4.pdf>

⁸ https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/830161/disability-confident-leader-level-3-pack.pdf

2. Extent of employer engagement with Disability Confident

The reforms announced thus far to Disability Confident by the government only apply to Disability Confident level 3. Notwithstanding the need, as argued above, to strengthen these reforms, the steps taken by the government will not impact significantly on labour market outcomes for disabled people given that employer sign-up to Disability Confident level 3 remains very low. By November 2019, as Table 2 shows, there were only 263 employers at level 3.

In addition, the adoption of Disability Confident level 3 has been particularly limited among mainstream business organisations. The government has largely relied on business case arguments to encourage employers to engage with Disability Confident, emphasising its ability to enable them to access a wider talent pool, secure hardworking and committed staff, and enhance their reputation. However, the effectiveness of this approach appears to have been limited. As Table 2 shows, we estimate that only 74 (less than 3 in 10)⁹ level 3 employers are private sector organisations that are likely to have been attracted to Disability Confident primarily by these business case arguments.

Instead, of the 263 level 3 employers, the majority (189)¹⁰ are either voluntary sector organisations that represent or provide social care and residential services to disabled people, or are public sector employers that have been directed to adopt Disability Confident. Therefore, the changes announced to Disability Confident level 3 will affect only a very small number of organisations overall, and only a tiny proportion of private sector businesses.

This suggests a need to strengthen Disability Confident across the board, and not just at level 3 (hence our recommendation above to extend reforms to Disability Confident level 2). However, even were this to happen, the overall impact on private sector businesses would still be negligible. As table 2 shows, almost half (7,464) of all Disability Confident employers (15,123) are located in the voluntary or public sectors. In terms of the proportion of private sector employers that have Disability Confident, there are 1.39 million private sector businesses in the UK that are not sole traders,¹¹ and there are 6,480 Disability Confident private sector businesses.¹² This suggests that only 0.47 per cent of private sector businesses are Disability Confident. The Centre for Social Justice estimates that only 15 per cent of employers have heard of Disability Confident. While this in itself might be considered worryingly low, it also suggests that the vast majority of employers who have heard of the scheme have chosen to not engage with it.

As such, despite recent increases in the number of employers signing up to Disability Confident, its reach remains highly limited, and level 3 in particular appears to have very little appeal to private sector employers. Therefore, even if Disability Confident is strengthened across the board and becomes a more meaningful indicator of organisations that employ a higher proportion of disabled people among their workforce, it would remain the case that only a very small proportion of businesses would be covered by it.

⁹ This includes the 68 organisations classified by the government as private sector, plus the 6 private sector organisations in the 'Other' category

¹⁰ This includes the 172 organisations classified by the government as voluntary or public sector, plus the 17 voluntary and public sector organisations in the 'Other' category

¹¹ <https://researchbriefings.files.parliament.uk/documents/SNO6152/SNO6152.pdf>

¹² This may be an underestimation of the total number of private sector businesses with Disability Confident, as some of the organisations in the 'Other' category may be in the private sector. However, even assuming (unrealistically) that all of the organisations in the 'Other' category are in the private sector, there would still only be 7,659 private sector employers with Disability Confident (0.55 per cent of all private sector organisations).

Table 2 Profile of Disability Confident Organisations November 2019

Sector	Disability Confident Level			Total	Percentage
	Committed (Level 1)	Employer (Level 2)	Leader (Level 3)		
<i>Voluntary & Public Sector</i>					
Voluntary, Charity & Social Enterprise	2,174	853	55	3,082	20.38
Education/ Teaching	881	517	25	1,423	9.41
Care/ Childcare/Social Care	1,014	217	10	1,241	8.21
Health	624	347	19	990	6.55
Public Sector	262	397	63	722	4.77
Armed Forces	6	0	0	6	0.04
<i>Voluntary & Public Sector Totals</i>	<i>4,961</i>	<i>2,331</i>	<i>172</i>	<i>7,464</i>	<i>49.36</i>
<i>Private Sector</i>					
Hospitality, Leisure & Tourism	1,296	91	5	1,392	9.20
Retail/Sales	1,203	65	8	1,276	8.44
Manufacturing & Engineering	471	107	8	586	3.87
Recruitment Agencies	438	70	9	517	3.42
Construction	299	58	2	359	2.37
Information Technology & Telecoms	242	50	5	297	1.96
Transport & Logistics	222	51	2	275	1.82
Arts & Media	219	44	3	266	1.76
Administration/Office	185	75	4	264	1.75
Facilities Management	182	38	3	223	1.47
Sports & Recreation	164	39	4	207	1.37
Financial Services	134	50	10	194	1.28
Security & Safety	134	22	0	156	1.03
Beauty & Therapy	164	5	1	170	1.12
Customer Service	75	14	3	92	0.61
Energy & Utilities	61	22	1	84	0.56
Agriculture	58	18	0	76	0.50
Contact Centres	35	11	0	46	0.30
<i>Private Sector Totals</i>	<i>5,582</i>	<i>830</i>	<i>68</i>	<i>6,480</i>	<i>42.83</i>
Other	946	210	23 ^a	1,179	7.80
Total	11,489	3,371	263	15,123	

^a The 23 level 3 organisations categorised by the government into the 'other' sector include 10 voluntary sector organisations, seven public sector organisations and six private sector organisations.

3. Beyond Disability Confident

Given the limited reach of Disability Confident, we argue the government should not rely on Disability Confident alone in encouraging employer engagement with the disability employment agenda. Instead, there are several other initiatives that would reach a wider number of employers and would likely have significantly greater impact, including:

a) Procurement/ the Social Value Act: The Cabinet Office consultation on *Social Value in Government Procurement* (2019) proposes that companies bidding for government

contracts must demonstrate how they will deliver social value within their bids. The inclusion of disability employment will be one social value measure (among others) against which companies are assessed in the bidding process. Tenders that include a disability employment provision are likely to require companies to report ‘the percentage of people with disabilities to be employed in relation to the contract, as a proportion of the total workforce employed on the contract’.¹³ This would be a positive step and indicates the Cabinet Office’s emphasis on the delivery (rather than just the promise) of social value. However, disability employment outcomes will only be included in the tender should the procuring body choose to include them. Given this, the government needs to act to ensure the majority (if not all) public procurement tenders include provisions on disability employment as a matter of routine, as happens in the United States. Without such provisions it is likely disability employment will be omitted from most contracts.

b) Mandatory disability employment reporting: There is a strong case for disability employment reporting (as introduced in 2018 within the framework for *Voluntary Reporting on Disability, Mental Health and Wellbeing*) to become mandatory for employers with 250 or more employees, subject to the changes outlined above to the question employers are recommended to use to assess employees’ disability status, and for employers to be required to report the proportion of their workforce that is disabled.¹⁴ Mandatory reporting has been recommended within a growing number of reports and statements, including the All-Party Parliamentary Group for Disability 2016,¹⁵ EHRC 2018,¹⁶ Sayce 2018,¹⁷ Leonard Cheshire Disability 2019,¹⁸ Shinkwin and Relph 2019.¹⁹

Several employers including the Civil Service, the National Health Service and broadcasters including BBC, ITV, Channel 4, Channel 5 and Sky already track specified metrics on the employment of disabled people. Introducing mandatory disability employment reporting for all large employers would therefore simply spread existing pockets of good practice more widely. Coupled to this, employers should also be required to produce action plans to demonstrate how they intend to increase the proportion of disabled employees in their workforce.

If implemented, such measures would have a more transformative effect on disabled people’s employment outcomes than the current proposed changes to Disability Confident level 3.

Contacts:

Kim Hoque: kim.hoque@wbs.ac.uk; Nick Bacon: nick.bacon.1@city.ac.uk

For further details of our research on disability, go to: www.disabilityatwork.co.uk

¹³ <https://www.gov.uk/government/consultations/social-value-in-government-procurement>

¹⁴ Sayce, L., Bacon, N., Hoque, K., Wass, V. and Jones, M. (2019) Improving disabled people’s employment and pay: Proposal for transparent reporting by employers.

¹⁵ <https://www.disabilityrightsuk.org/news/2016/december/mps-and-peers-offer-plan-support-six-million-disabled-people-work>

¹⁶ <https://www.equalityhumanrights.com/en/publication-download/measuring-and-reporting-disability-and-ethnicity-pay-gaps>

¹⁷ <https://mailchi.mp/cd17fb62a66/special-report-liz-sayce-switchingfocus-whose-responsibility-to-improve-disabled-peoples-employment-and-pay>

¹⁸ Reimagining the workplace at <https://www.leonardcheshire.org/our-impact/our-policy-influencing-and-research/our-publications/reports>

¹⁹ Shinkwin, K. and Relph, G. (2019) The case for enabling talented, young, disabled graduates to realise their potential and reach the top. Demos discussion paper. July.