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RESPONSE TO THE NATIONAL DISABILITY STRATEGY

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The government published its National Disability Strategy (NDS) on July 28th 2021. It contains an appreciable focus on employment, and also suggests a belated understanding within government of the need to increase employer engagement with the disability employment agenda, and the central role of employers in helping to address the workplace barriers disabled people encounter in finding and retaining work. Disability@Work has sought to promote this argument for several years.

Despite this, it is concerning that several of the employment-related proposals within the NDS are for consultations and reviews of existing policy, rather than for immediate action or more substantive policy change.

Below, we comment on the areas of policy Disability@Work discussed with the Minister for Disabled People, and with senior officials at the Cabinet Office Disability Unit and the Department for Work and Pensions (DWP), in the months preceding the publication of the NDS. These include: the importance of accounting for growing workforce disability prevalence in estimating the disability employment gap; the introduction of mandatory disability employment and pay gap reporting; reform of the government's Disability Confident scheme; the scope for government procurement to be leveraged to improve disability employment outcomes; and the role of trade unions.

i) Disability prevalence adjusted employment gap

The NDS states, 'The disability employment gap has narrowed significantly in recent years, from 33.8 percentage points in 2014 to 28.6 percentage points in 2021' (p.48). However, as recent Disability@Work analysis shows, it is important to adjust for workforce disability prevalence in estimating the size of the disability employment gap.¹ This is important given workforce disability prevalence is increasing, possibly as a result of individuals identifying as disabled today who would not have done so in the past. However, these individuals are likely to have milder (and less activity-limiting) conditions; hence, they are more likely to be in employment. This skews the headline disability employment gap figure downwards. Disability@Work research shows *once the growth in workforce disability prevalence is accounted for, the disability employment gap has not improved since 2010.*

¹ <https://www.disabilityatwork.co.uk/wp-content/uploads/2020/08/Briefing-Note-disability-measurement-.pdf>

It is notable that the *Shaping future support: the health and disability green paper* makes repeated reference to growing disability prevalence.² This suggests the government is aware of the importance of taking growing disability prevalence into account in certain policy areas but has not acknowledged in the NDS the importance of taking it into account in estimating the disability employment gap.

Therefore, used on its own as an indicator of disability employment disadvantage, the headline disability employment gap figure can be misleading. By implying improvement over time, it downplays the urgency for substantive policy reform. Given this, the NDS should not rely on the headline disability employment gap figure as a measure of past and future progress.

ii) Mandatory disability employment reporting

The NDS acknowledges there is a business case for employers to measure and report how many disabled employees they have as a proportion of their workforce (on p.57 it states ‘we will highlight the business benefits of workforce reporting as part of wider discussions on developing inclusive workplace cultures, to encourage a more open approach’). It also announces that the ‘Cabinet Office will consult on workforce reporting on disability for large employers, exploring voluntary and mandated workplace transparency, and publish a set of next steps’ (p.56).

An increasing number of employers are already reporting on a range of disability metrics in both the public sector (e.g., NHS, Civil Service, Higher Education) and the private sector (e.g., BBC, Sky, Channel 4, Channel 5, Microsoft).³ Mandatory reporting would roll out these examples of best practice across all large employers. Notably, the House of Commons Work and Pensions Committee’s report on the disability employment gap also recommends ‘the Government should require larger employers (those with 250+ employees) to publish data on the proportion of their employees who are disabled’ (p.19).⁴ In addition, as Disability@Work have previously argued, introducing mandatory disability employment reporting provides a critically important foundation for other essential policy reforms (e.g., the introduction of a more outcomes-based focus within Disability Confident and the award of government procurement contracts, for example). The failure to create a level playing field by introducing mandatory disability employment reporting would delay and impede these other reforms.

However, *it is disappointing that the government has only reached the stage of consulting on the introduction of mandatory reporting.* Given it is nearly two years since the government’s manifesto commitment to publish the NDS, and two and a half years since introducing its *Voluntary Reporting Framework on Disability, Mental Health and Wellbeing in the Workplace*,⁵ it would be reasonable to expect the government to have used this time to consult on mandatory reporting, and then announce the introduction of new policies in the NDS. Nevertheless, *once this consultation has been undertaken by the end of 2021, it is imperative*

² For example, on p.10 it states ‘The number of working-age people reporting a disability increased by 20% between 2013 and 2019, and is forecast to continue to grow. The number of older working-age people has increased and, typically, people’s health declines with age. However, changes in the age of the working-age population do not fully explain the increase in the number of people claiming health and disability benefits. There are likely to be many factors, including the increase in the proportion of people reporting a mental health condition’.

³ <https://www.disabilityatwork.co.uk/wp-content/uploads/2019/12/Proposal-for-transparent-reporting.pdf>

⁴ Second Report of Session 2021–22, HC 189.

⁵ Department for Work and Pensions, November 2018

the necessary legislation follows in the first quarter of 2022. Proposals for the requisite legislation are already laid out in Lord Shinkwin's Workforce Information Bill.⁶

The NDS states the government will consult on some important matters of detail regarding mandatory reporting. These include the use of 'a standardised question when asking employees about their disability status' and 'the type of information and data employers could collect and ways to do this in a standardised manner' (p.56). This is consistent with recommendations Disability@Work have previously made to the Minister for Disabled People, the Cabinet Office Disability Unit, and the DWP.⁷ *We would strongly endorse standardisation of this nature, given a standardised reporting system is essential to ensure disability metrics are consistent and comparable across organisations.* It will enable employers to track their relative progress, allow an organisation's disability employment metrics to be used within procurement decisions or for accreditation purposes, and provide disabled job applicants with reliable information to identify organisations that are more likely to employ them.

A notable omission from the NDS is that it *does not make any reference to pay gap reporting.* The extension of gender pay gap reporting to disability will not only allow employers to identify whether disabled employees are paid less on average than non-disabled employees, but also whether disabled people cluster into lower pay quartiles.⁸ Once an employer has introduced disability employment reporting, the introduction of pay gap reporting is relatively straightforward, given the first (and most important) step in calculating their disability pay gap is to identify their disabled employees. As such, *introducing disability pay gap reporting is an obvious next step subsequent to the introduction of disability employment reporting, that would not result in undue additional administrative burden on employers.*

It is notable that the consultation on mandatory disability employment reporting will be handled by the Cabinet Office. At the same time, however, the NDS proposes the continued promotion of the Voluntary Reporting Framework (pp.56-7), which also addresses matters relating to disability employment reporting. This will be the responsibility of DWP. Given the NDS commits to 'deliver joined up responses working across organisational boundaries' (p.93), it is therefore *imperative these separate Cabinet Office and DWP initiatives do not cut across each other.* We argue the government should *not promote the Voluntary Reporting Framework while the consultation on mandatory reporting is ongoing, given the possibility the latter will supersede the former.* Promoting the Voluntary Reporting Framework would be unhelpful to employers' efforts to implement disability employment reporting, given employers may need to change their reporting procedures to comply with new mandatory reporting requirements, should such requirements be introduced. *Continuing to promote the Voluntary Reporting Framework may also inadvertently confuse the message to disabled people and employers regarding the purpose of the consultation on mandatory reporting.*

It is notable that at several points throughout the NDS, the Civil Service is used as an example of best practice. For example, on p.59 it states '12.8% of civil servants in UK government departments identify as having a disability, compared with just 7.6% a decade ago and 10% in 2018'. On p.60 the NDS then goes on to outline the forms of support that have been introduced to support disabled Civil Servants.

⁶ HL Bill 82, 2020

⁷ <https://www.disabilityatwork.co.uk/wp-content/uploads/2020/04/Recommendations-for-revision-of-the-voluntary-reporting-framework.pdf>

⁸ See also: <https://www.centreforsocialjustice.org.uk/wp-content/uploads/2021/03/CSJJ8819-Disability-Report-190408.pdf>

What the NDS does not note, however, is that Civil Service departments are already mandated to report on their disability employment prevalence. It is quite likely that many of the best practice initiatives the Civil Service has implemented have been introduced in response to mandatory reporting. The government should therefore *use the example of the Civil Service to illuminate the potentially transformative effects of mandatory disability reporting.*

iii) Review of Disability Confident

The NDS states ‘DWP will work with the Disability Confident Professional Advisers Group (PAG) and the Business Leaders Group this year to review and strengthen Levels 2 and 3 of the Disability Confident scheme, to support employers to increase disabled people’s employment opportunities’ (p.54). It also states the scheme will be updated by the end of the year.

While it is important the government recognises Disability Confident requires reform, it is disappointing that it has taken nearly two years since the government’s manifesto commitment to publish the NDS for it to announce this review. Also, while the NDS recognises the need for Levels 2 and 3 to be strengthened (it implies little change to Level 1), it is concerning there are no concrete proposals regarding what this might comprise. One of the main criticisms Disability@Work have previously made of Disability Confident is that accreditation is based on whether employers claim to have adopted certain policies and practices, rather than the number of disabled people they employ and disability gaps in the experience of work. This is particularly important, not least given Disability@Work research showing workforce disability prevalence was no higher, and disability gaps in the experience of work were no lower, in organisations accredited with Two Ticks (the forerunner to Disability Confident).⁹ *It is concerning the NDS does not contain explicit proposals to revise Disability Confident to make the award dependent on outcomes such as the proportion of disabled people in the employers’ workforce and disability gaps in the experience of work rather than their adoption of certain policies and practices.*

As the NDS states (p.56), in November 2019, DWP introduced a requirement that new and renewing Disability Confident Leaders (Level 3) would report against the Voluntary Reporting Framework. However, this requirement conflicts with the forthcoming consultation on mandatory disability employment reporting, given it implies Level 3 Leaders will be expected to adhere to a framework that might soon be superseded. Specifically, *the question employers are recommended to use within the Voluntary Reporting Framework to measure disability employment is inconsistent with the desire expressed in the NDS to move towards a superior harmonised measure across all government surveys* (p.94).

We note the NDS claims 11 million people are employed in Disability Confident organisations (approximately 36 per cent of the total number of people employed in the UK). However, it does not outline how this figure has been calculated. There are currently 1,413 million private sector businesses in the UK (with employees). As the NDS states, 20,000 employers have Disability Confident status. Even if these were all in the private sector, this would equate to just 1.42 per cent of private sector firms. The list of Disability Confident employers on the DWP’s website shows many are small firms (and many are micro-firms). Given this, *the estimate of 11 million people working for Disability Confident employers is not convincing, as it is unclear how it has been calculated.*

⁹ <https://www.disabilityatwork.co.uk/wp-content/uploads/2019/11/disability@work-Disability-Confident-level-3-briefing-paper.pdf>

iv) Leveraging procurement

The NDS makes a commitment to leveraging ‘government procurement spend to drive improved outcomes for disabled people’ (p.94). It also acknowledges the new Social Value Model of public procurement, introduced in January 2021, which ‘commercial teams across government use ... to assess and evaluate the social value offered in tenders, and to manage and measure the social value delivered in contracts’, with priority outcomes including ‘reducing the disability employment gap, promoting equality of opportunity and supporting physical and mental health in the contract workforce’.

In addition, a new Disability Crown Representative will be appointed to ‘help to ensure that the case for inclusion is more strongly and consistently conveyed to businesses, so that they invest in – and realise the commercial benefits of – inclusive business’ (p.95).

*However, the government needs to go further.*¹⁰ Disability@Work has previously proposed to the Cabinet Office and DWP that:

- disability employment outcomes need to be taken into account in all contract award decisions (contracting authorities are currently required to select objectives that are relevant and proportionate to the contract, so there is no guarantee disability will be taken into account);
- the primary disability metric used in contract award decisions should be tendering firms’ workforce disability prevalence;
- firms that are awarded contracts should be required to work towards an aspirational target for workforce disability prevalence that applies to the firm’s whole workforce and not just the contract workforce;
- should firms that are awarded contracts fail to demonstrate progress, this should be taken into account in future contract bids;
- the new Social Value model of procurement should apply to *all* public sector procurement, rather than just central government procurement, as is the case currently.

Failure to introduce such measures within the NDS represents a significant shortcoming.

v) The role of trade unions

Prior Disability@Work research shows disability equality policies and practices are more widely adopted in organisations with trade unions,¹¹ and also that union equality representatives and disability champions play an important role in supporting disabled employees and encouraging the more widespread adoption of disability equality practices.¹² However, the NDS makes no reference to the contribution of trade unions in supporting

¹⁰ For further details, see: <https://www.centreforsocialjustice.org.uk/wp-content/uploads/2021/03/CSJJ8819-Disability-Report-190408.pdf>

¹¹ Hoque, K. and Bacon, N. (2014). ‘Unions, joint regulation and workplace equality policy and practice in Britain: Evidence from the 2004 Workplace Employment Relations Survey’. *Work, Employment and Society*, 28(2): 265–284

¹² Bacon N and Hoque K (2015) The influence of trade union Disability Champions on employer disability policy and practice, *Human Resource Management Journal* 25(2): 233–24

disabled people, or the ways in which unions can be assisted in providing this support (via the provision of statutory rights to facility time for equality representatives and disability champions, for example).¹³

The NDS highlights the importance of increasing disabled people's knowledge of their rights (regarding reasonable adjustments, for example) (p.55). However, even if this happens, it will be of limited benefit if disabled people are unable to exercise their rights. Unions play an important role both in increasing disabled people's awareness of their rights and in helping them exercise these rights (either in conversations with managers and, if necessary, through employment tribunals). *Given this, the failure to offer proposals to assist trade unions' efforts to increase disabled people's knowledge of, and ability to exercise, their rights, is a significant weakness of the NDS.*

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¹³ See also: <https://www.centreforsocialjustice.org.uk/library/now-is-the-time-a-report-by-the-csj-disability-commission>