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**SUBMISSION TO *SHAPING FUTURE SUPPORT: THE HEALTH AND DISABILITY GREEN PAPER*. SUPPORTING EMPLOYERS TO IMPROVE WORK OPPORTUNITIES FOR DISABLED PEOPLE THROUGH DISABILITY CONFIDENT**

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One of the questions asked within the consultation on the *Shaping Future Support: The Health and Disability Green Paper* is what more could be done to further support employers to improve work opportunities for disabled people through Disability Confident. In the below we address this issue, focusing specifically on: Disability Confident accreditation criteria; thresholds for accreditation at levels 2 and 3; how disability employment outcomes should be measured; monitoring and reaccreditation processes; and movement through the levels.

**i) *Accreditation criteria***

The criteria for Disability Confident accreditation, particularly for levels 2 and 3, needs to become significantly more challenging. Currently, the criteria focus entirely on employers making commitments and having adopted at least one activity, rather than whether they deliver positive disability employment outcomes (in particular regarding the number of disabled people they employ as a proportion of their workforce). Given this, it is possible for employers to achieve Disability Confident accreditation (even at levels 2 and 3) despite being proportionately no more likely to employ disabled people than non-accredited employers.<sup>1</sup>

Reflecting these concerns, research exploring the forerunner to Disability Confident (Two Ticks) shows the prevalence of disabled people was no higher in Two Ticks workplaces than in non-Two Ticks workplaces.<sup>2</sup> It is similarly highly likely that Disability Confident employers are proportionately no more likely to employ disabled people than non-Disability Confident employers. This is for two main reasons. First, many Disability Confident employers were previously Two Ticks employers (having been transferred across from Two Ticks in 2016), which, as research shows, were proportionately no more likely to employ disabled people than were non-Two Ticks employers. Second, as for Two Ticks, the Disability Confident accreditation criteria focuses on whether employers have made commitments (and adopted at least one activity) rather than the proportion of disabled people in their workforce, and there is no independent assessment to evaluate if employers are upholding the commitments

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<sup>1</sup> Centre for Social Justice (2021) *Now is the Time: A report by the CSJ Disability Commission*. <https://www.centreforsocialjustice.org.uk/wp-content/uploads/2021/03/CSJJ8819-Disability-Report-190408.pdf>

<sup>2</sup> Hoque, K., Bacon, N. & Allen, D. (2019) *Do non-assessed employer certifications offer reliable labor market signals?* Paper presented at the Academy of Management Conference, Boston, August.

expected of them, or if they are implementing activities in an effective manner (although there is external validation at level 3, organisations select their own validators).

This suggests Disability Confident may be little more than window dressing, which sends a false signal to disabled people regarding the organisations that are more likely to employ them. The growth in the number of Disability Confident employers also risks creating a false impression that progress is being made, thereby deflecting government attention away from policy solutions that might be significantly more effective in addressing disability employment disadvantage.

Given this, for Disability Confident to be deemed a credible and meaningful labour market signal ***it is essential that the certification criteria at levels 2 and 3 are amended to focus on workforce disability prevalence.*** This would involve requiring employers to demonstrate they meet a minimum threshold of disabled people in their workforce.

### ***ii) Disability employment thresholds for accreditation at levels 2 and 3***

An important issue further to the above is the level at which disability employment thresholds should be set at levels 2 and 3. A sensible starting point would be a figure of 7 per cent for Disability Confident level 2 (the same figure that is used in the United States' 503 Federal Contractor Regulations as an aspirational 'utilisation goal' to which federal contractors are expected to work towards), and a figure of 10 per cent for level 3. Hence, ***to achieve level 2 accreditation, an employer would need to demonstrate 7 per cent of their workforce are disabled people, whereas to achieve level 3 accreditation, they would need to demonstrate 10 per cent of their workforce are disabled people.*** Both of these figures are below the percentage of the UK's workforce that report they are disabled, so they should not be viewed as overly burdensome by employers. We would nevertheless recommend a consultation is conducted with DPOs, disability charities, employers, and disability employment experts to determine the levels at which these thresholds should be set – though we would caution that if the thresholds are set at too low a level this will call the credibility of Disability Confident into question. Once appropriate thresholds have been established and enforced, Disability Confident will provide a more reliable signal regarding which employers are more likely to hire and retain disabled people.

### ***iii) Measuring disability employment outcomes***

To introduce the aforementioned disability employment thresholds, data that is comparable across employers will be needed. Therefore, it will be necessary to introduce a standardised method for employers to measure the prevalence of disabled people in their workforce. Should the government introduce mandatory disability employment reporting (as is currently being consulted on following the National Disability Strategy), this would automatically demonstrate which employers meet the disability employment thresholds for accreditation at levels 2 and 3. However, if introduced, mandatory reporting may only apply to organisations with 250+ employees; hence, SMEs wishing to apply for Disability Confident accreditation would also need to measure and report their workforce disability employment prevalence (which they would be able to do by following the mandatory reporting procedures). It is important to note that requiring SMEs to meet the same disability employment thresholds as

large firms would not disadvantage them, given SMEs employ proportionately just as many disabled people as do large firms with 250+ employees.<sup>3</sup>

If the government does not introduce mandatory reporting, ***an alternative standardised framework would need to be developed for employers to use in demonstrating whether they meet the disability employment thresholds required for level 2 or 3 accreditation.*** One option would be to base this framework on the government's framework for *Voluntary Reporting on Disability, Mental Health, and Wellbeing* (VRF).

However, this would require the VRF to be reformed in several areas.<sup>4</sup> First, the VRF recommends employers use the following question to ask employees about their disability status: '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 2010 definition of disability or the Government Statistical Service's harmonised disability measure. It is also possible that the current recommended question leads to underestimations of disability prevalence given its specific mention of disability, which may result in respondents with a long-term activity-limiting health condition providing a negative response as they do not identify as disabled. Instead, ***the VRF should use the same question used in the Labour Force Survey (LFS)*** ('Do you have any physical or mental health conditions or illnesses lasting or expecting to last 12 months or more?'. If yes: '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). The LFS question is consistent with the definition of disability in the Equality Act.

Second, and further to the above, it is important that all employers use this standardised question when asking employees about their disability status, given that even slight changes in the wording of the question asked can produce markedly different results. As such, if the questions employers use differ (even if only slightly) it will not be possible to compare the figures across employers with any degree of certainty. Given this, ***rather than the question in the VRF being 'recommended' (as is the case currently), it should instead be 'required', with employers not being permitted to deviate from it when asking employees about their disability status.*** This would allow for a more reliable comparison of data across employers.

Third, in further ensuring comparability of data across employers, it is important that a standardised data collection method is used. Employers currently collect data from their employees on their disability status through a variety of methods including self-declarations at the recruitment stage, periodic updating of HR records, and via staff attitude surveys. These different approaches can lead to the under or over-reporting of disability prevalence among the workforce; hence, it is impossible to compare figures across employers that use different data collection techniques with any reasonable degree of accuracy. We would therefore recommend ***the introduction of a standardised method of data collection that involves employers distributing a 'Voluntary Self-Identification of Disability' form to their employees.*** This would be similar to Form CC-305 that supports the US government's Section 503 of the Rehabilitation Act of 1973, which invites employees to

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<sup>3</sup> Bacon N. & Hoque, K. (2021) The treatment of disabled individuals in small, medium-sized, and large firms. *Human Resource Management* <https://doi.org/10.1002/hrm.22084>

<sup>4</sup> Disability@Work (2020) *Recommendations for amendments to the framework for Voluntary Reporting on Disability, Mental Health and Wellbeing*. Briefing paper <https://www.disabilityatwork.co.uk/wp-content/uploads/2020/04/Recommendations-for-revision-of-the-voluntary-reporting-framework.pdf>

disclose their disability status to their employers.<sup>5</sup> This form would have to be adapted for use in the UK by using the LFS-based question outlined above to ask employees about their disability status. This ‘Voluntary Self-Identification of Disability’ form would need to be government-approved such that it could not be altered or changed by employers.

Fourth, the VRF states that employers are expected to report ‘where possible’ the percentage of individuals within their organisation who are disabled or have a long-term physical or mental health condition. However, this reporting would need to be compulsory, such that all employers engaging with the VRF should be required to report the percentage of their employees who are disabled.

If the reforms to the VRF as outlined above are enacted this would enable it to be used as an appropriate measurement tool to evaluate employers regarding whether they meet the aforementioned Disability Confident level 2 and level 3 disability employment thresholds.

**iv) Monitoring and reaccreditation processes, and movement through the levels**

An important consideration is what should happen to accredited employers who, over time, slip below the disability employment thresholds required for level 2 and 3 accreditation. In such instances, **employers should be moved down a level, but should be given a grace period in which to improve before this happens.** Should they fail to improve during this grace period, they should be moved down a level as appropriate (for example, if a level 3 employer is only able to demonstrate they meet the disability employment outcomes expected of a level 2 employer, they should be moved down to level 2, and if they do not meet the disability employment outcomes required at either level 2 or level 3, they should be moved down to level 1).

Where level 1 employers are concerned, there should be an expectation that they move up to level 2 or 3 and do not sit at level 1 indefinitely. As such, level 1 should be granted to employers for a period of 3 years. **If they show insufficient progress towards moving up to level 2 or level 3 by the end of this time period, they should have their Disability Confident status removed, and they should not be permitted to reapply for level 1 status for a further period of 3 years.**<sup>6</sup>

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<sup>5</sup> [https://www.dol.gov/ofccp/regs/compliance/sec503/Self\\_ID\\_Forms/VoluntarySelfID\\_CC-305\\_ENG\\_JRF\\_QA\\_508c.pdf](https://www.dol.gov/ofccp/regs/compliance/sec503/Self_ID_Forms/VoluntarySelfID_CC-305_ENG_JRF_QA_508c.pdf)

<sup>6</sup> Centre for Social Justice (2021) *Now is the Time: A report by the CSJ Disability Commission.* <https://www.centreforsocialjustice.org.uk/wp-content/uploads/2021/03/CSJJ8819-Disability-Report-190408.pdf>