THE IMPACT OF THE COALITION GOVERNMENT ON DISABLED WORKERS:

Workplace experiences and Job Quality

Report of a study by the Public Interest Research Unit for Disabled People Against Cuts, May 2015. Rupert Harwood.

CONTENTS

i. INTRODUCTION

Disability related disadvantage

Analysis of the Labour Force Survey 2012 "shows that one in six people of working age living in the UK is disabled " (Coleman et al., 2013: vii). Disabled individuals experience considerable disadvantage in relation to employment (e.g. Hills et al, 2010), including lower wages and higher levels of unemployment (e.g. Coleman et al, 2013: viii), as well as being more likely to experience ill-treatment in the workplace (eg. Fevre et al, 2013). An important measure of employment related disadvantage is the disability employment gap, which is the percentage point difference in the employment rate between those who are disabled and those who are not (Jones and Wass, 2013: 987). For example, in 2011, the disability employment gap for men was 49.1% and for women was 38.6% (Jones and Wass, 2013: 991). However, the UK/GB/England wide evidence on how the disability employment gap has changed since 1998 is contradictory and only goes up to 2012 (Baumberg et al., forthcoming); and, according to Baumberg et al (forthcoming: 18) - 'Until the discrepancy in trends is explained, we cannot be confident that the disability-related employment gap has fallen...'. As regards the post-2010 period (i.e. since the Coalition came to power), Baumberg et al's (forthcoming) Figure 2 ("Employment Gap by Survey ... (1998-2012)") does show that - (a) the Health Survey for England indicates that the disability employment gap has increased since 2010; (b) the Labour Force Survey indicates that the considerable closing of the gap since 1998 has stalled since 2010; and (c) the General Household Survey stops at 2010. However, Jones, one of the authors, points out - "since there is variation in the data year on year I wouldn't be very confident in making any conclusions based on data from a single year e.g. HSE" (email, April 2015). What does seem clear is that the Coalition does not have a solid basis on which to claim that it has

outperformed previous governments in reducing the disability employment gap. In addition, there is the question (which this paper contributes to addressing) of whether there is a job quality gap between disabled and non-disabled workers and the question of what has happened to any such gap since 2010.

Disability employment law

There are quite wide ranging legal protections in place (e.g. Maynard, 2010) to address the ill-treatment and other disadvantage that disabled workers can experience. It also appears that these protections could have played an important role in improving employment practice. For example, in a study of practice across 34 British local authorities, Harwood (2014: 1517) found that "[m]ost of the line-managers, HR managers, equality officers, and union representatives, appeared to indicate that the reasonable adjustments duty had had a considerable impact on their practice ...". It also seems that adjustments to working arrangements (such as altering work duties) and to the working environment (such as making an office more wheelchair accessible) can benefit organisations at the same time as benefiting disabled workers. For example, referring to reasonable adjustments and citing Schur et al. (2013), Bell (forthcoming:11) writes - "Studies from the US have reported significant benefits in terms of improved productivity, less absenteeism, better workplace morale and avoiding the costs of recruiting and training a replacement worker". There are, however, major weaknesses in the wording and interpretation of the statute. For example, there is no entitlement to reasonable adjustments - however substantial the disadvantage suffered - unless the individual meets a quite restrictive definition of disabled. There is also evidence that the reasonable adjustments duty and other disability employment protections are quite often breached (e.g. Adams and Oldfield 2012). Further, as discussed below, from almost the word go, the Coalition has been cutting important employment and equality law protections and weakening enforcement (eg. Hepple, 2011; 2013; Dickens 2014) of the protections which remain.

The research rational, questions, and method

The Coalition's radical programme of change has had important implications for employment practice. This includes in the case of cutting employment and equality law protections; policies affecting individual freedoms, such as restrictions on freedom of speech and the right to protest, rolling back legal due process (e.g. Standing, 20142-13-230), and ministerial attacks on the value of human rights; "welfare reform" (e.g. Patrick, 2011, 2012); cutting public expenditure and outsourcing public services; and flexible workforce policies. The literature does address the impact of some of these Coalition policies on workers in general. For example, drawing upon the existing literature, Pownall (2013: 422) assesses the impact of the fragmentation of the NHS workforce "amongst an expanding body of independent healthcare providers", and concludes - "In terms of winners and losers, it is evident that the vast majority of NHS staff will witness a patently detrimental impact on the quality of their working life". However, at least outside the "welfare" field, there still quite limited empirical evidence on the impact of Coalition policies on the workplace experiences of workers in general. Further, there are few studies (e.g. TUC, 2012; Trotter, 2014; Harwood, 2014) which cast empirical light on the particular impact of some of these policies on disabled workers. The study reported here aimed to help address that gap. Specifically, it considers - what impact have Coalition policies, and the Coalition's term of office, had on the disadvantage that disabled people face in relation to work? This question can be divided into two principal parts - (1) what has happened in relation to employment rates since 2010?; and (2) what has happened in relation to workplace experiences, discrimination and other ill-treatment, and job quality? Having referred above to the contradictory evidence of relevance to part (1) of the question (i.e. the findings on the employment gap from different surveys), this report now focuses on part (2) of the question. However, the report also bears in mind that the two parts of the question can, of course, be linked. For example, wide spread discrimination in recruitment could reduce the rate of employment for disabled individuals.

Data was collected from the public, private, and voluntary, sectors. The principal sources of data were -

- Information collected from 137 disabled workers, consisting of answers to a qualitative survey; answers to follow-up questions emailed to those respondents who indicated a willingness to answer them; and in-depth interviews, which have just begun, and which will be more fully reported on when completed.
- Around 510 documents from 141 public authorities and answers to Freedom of Information Act requests.
- Coalition government policies and statements; and a literature review.

The study has so far identified a range of impacts on particular disabled workers, as well as processes and factors which appear to have been implicated in these impacts. Neither the sample of disabled workers, nor the sample of organisations, were designed to be representative. Therefore, it is assumed that at most the findings can be used as the basis for tentative conclusions about UK disabled workers as a whole. The generalisability of some of these conclusions will be investigated further, including using more quantitative methods. However, despite these limitations, it seems fairly safe to conclude (including from the patterns emerging in the data collected so far) that many disabled workers have experienced considerable disadvantage and hardship which has been in part at least the consequences of Coalition government policies.

Findings

The study suggested that (among the organisations included and perhaps beyond these) there had been a deterioration in terms and conditions, workplaces experiences, and job quality, for workers in general; and suggested that this deterioration was having disproportionate adverse impacts on disabled workers. With the major caveats referred to above, the principal findings (relating to disabled workers) include the following.

- Employer attitudes towards disabled workers have deteriorated in the last four years.

- Appearing to contribute to the increase in negative attitudes, government and other rhetoric about disability benefits cheats seems to have spilled over into the workplace.
- Zero hours contracts are causing particular problems for disabled workers, including as result of the high levels of ill-treatment associated these contracts.
- Unlawful discrimination, including harassment and unlawful dismissal, appears to have been increasing.
- There has been a reduction in organisational support for disabled workers and an increased emphasis on discipline. Of particular note, there is a reduced willingness to make reasonable adjustments.
- Being disabled appears to have, in general, put disabled workers at particular risk of being made redundant or otherwise dismissed.
- In a majority of organisations, looked at for these purposes, there had been a fall in the proportion of disabled workers. However, the fall and the sample were small.
- The study identified 22 major cuts to equality and employment law protections since 2010. These included, for example, doubling the normal qualification period for protection from unfair dismissal; abolishing employer liability for failure to take reasonably practicable steps to prevent third parties (such as customers or clients) repeatedly harassing an employee; and not bringing into effect the Equality Act 2010 provision on combined discrimination.
- With the introduction of tribunal fees, disabled workers were finding it hard or impossible to enforce the rights which remain.
- It appears that Coalition cuts to legal protections were starting to have adverse impacts on disabled workers. For example, there were indications that weakening the Public Sector Equality Duty could have reduced the pressure on public sector organisations to encourage good disability equality practice.
- It also appeared that cuts to legal protections could in some cases at least be damaging organisation performance. For example, making it easier to dismiss workers (and, in particular, through changes to unfair dismissal

law) appears to reduce an organisation's incentive to develop employee skills and knowledge through training and development.

- There are strong indications that the Conservatives intend, if returned to power, to make deeper cuts to equality and employment law protections. In deed, the types of cuts which (it is argued in this report) they could have in mind would take us back to a level of protection which existed before the 1970s.
- Public sector redundancies (consequent upon public spending cuts) could have had a disproportionate impact on disabled workers. There are a higher percentage of disabled workers in the public sector, compared to in the workforce as a whole. Therefore, if public authorities have made the same proportion of their disabled workforce redundant, as their non-disabled workforce, redundancies could have had a disproportionate impact on disabled workers in the UK. In addition, however, it appears that being disabled put some workers at particular risk of being made redundant. In some cases, for example, it appears that employers would not make the adjustments (such as permitting someone to start and finish work later) which would have enabled a worker selected for redundancy to be relocated to a different post.
- Some of those who were made redundant, or whose jobs were outsourced, appear to have moved from situations in which there was reasonable support for workers with disabilities to private sector ones where there was little or none.

1. SUMMARY

1.1 Research Method

(a) Data collection.

The principal sources of data have been:

- Information collected from 137 disabled workers during March and April 2015, using a self-selecting qualitative survey and answers to follow-up questions emailed to those respondents who indicated a willingness to answer them.

- Follow-up in-depth interviews. The interviews have only just begun and more results from these will be published later.
- A total of around 510 (pre- and post- 2010) organisational documents collected (for other purposes) from 141 public authorities. About half of these have been analysed so far.
- Answers to Freedom of Information Act requests sent in February and March 2015 .
- Coalition government policies, statements, contributions to parliamentary debates, and media interviews.
- A literature review, covering, for example, some of the research literature on the Coalition government, employment and equality law, welfare reform, and disability studies.

(b) Data analysis

The qualitative analysis included three principal iterative elements: contextual focus analysis, generative focus analysis, and evaluative focus analysis (See Harwood, 2014: 1516 for more details of the approach). The limited in scope quantitative analysis in this phase applied descriptive statistics.

(c) Data collection and analysis in the next phase

Most of the in-depth interviews remain to be done. In addition, the intention is to conduct a quantitative survey to test the generalisability of some of the major conclusions from the qualitative findings.

(d) Study limitations

The study has so far identified a range of impacts on particular disabled workers, as well as processes and factors which appeared to be implicated in these impacts. However, the sample of disabled workers was not designed to be representative, and so it is assumed that at most the findings to date can be used as the basis for tentative conclusions about UK disabled workers as a whole. In addition, the great majority of the documents collected so far have been from public sector organisations.

(e) Research ethics

Informed consent will be required for all interviews; and all information has been anonymised to hide the identities of participants. Please note that some typos and spelling mistakes have been corrected in some responses and some punctuation has been changed for the sake of readability.

1.2 Legal background: cutting employment rights

(a) The contribution of employment law protections

The research literature indicates that employment rights can make an important contribution to improving terms of employment and working conditions for disabled workers (e.g. Bell, forthcoming), as well as helping to sustain employment and supporting career progression (e.g. Harwood, 2014: 1517).

(b) Justification for cuts and the counter-evidence

From almost the word go, the Coalition has been cutting equality and employment law protections (e.g. Hepple, 2011; 2013), not withstanding several significant improvements to protections, such as extending the right to request flexible working. The principal stated justification for the cuts has been the need to promote economic growth (e.g. BIS, 2012). However, the research literature indicates that reasonable levels of employment law protection are more conducive to growth than low levels (e.g. Deakin and Sarker, 2008; Crouch, 2012). This could be in part be on account of cuts to employment rights making it easier to hire and fire workers, and so reducing an organisation's incentive to develop employee skills and knowledge. Indeed, it seems possible that the UK's poor productivity record in recent years (e.g. Pessoa and Van Reenen, 2014) could in part be the result of its "liberalised" employment rights regime.

(c) Coalition cuts made so far to legal protections and enforcement

Some of the principal cuts so far (including failures to implement laws passed under the previous government) are listed and discussed in this report (para. 3.2). These cuts include:

1. Doubling the normal qualification period for protection from unfair dismissal.
2. Abolishing employer liability for failure to take reasonably practicable steps to prevent third parties (such as customers or clients) repeatedly harassing an employee.
3. Weakening health and safety law (e.g. Turner, 2013).
4. Weakening the TUPE regulations (e.g. McMullen, 2014).
5. Weakening the public sector equality duty, through watered down specific duties.
6. Exempting businesses with 50 or less staff from being subject to important statutory employment law protections.
7. Not bringing into effect the Equality Act (EqA) 2010 provision on combined discrimination, which would have provided protection from discrimination on the grounds of, for example, being a disabled woman.
8. Not introducing the EqA Public Sector Socio-economic Duty (which addresses inequalities).
9. Failing to use the regulation making power (section 155(2)) in the EqA to introduce a specific equality duty directed at promoting equality through public procurement.
10. Introducing (through Best Value Statutory Guidance) (DCLG, 2015) a duty which appears to be aimed at limiting the use of procurement to promote equality (DCLG, 2015).
11. Introducing the Employee Shareholder Status, which is shorn of important statutory protections (Prassl, 2013), and which some employees are pressurised into to signing-up to.
12. Abolishing the Agricultural Wages Board.
13. Abolishing the discrimination questionnaire procedure.
14. Introducing tribunal fees, which the TUC (2011: 18) has said will "price working people out of access to justice".
15. Making it harder for unions to assist individual members with enforcing their employment rights, including as a result of cuts to facilities time (TUC, 2014: 23; Labour Research Department, 2014) following government ordered reviews (e.g. DES, 2013).
16. Cutting legal advice services (e.g. Sommerlad and Sanderson, 2013).

17. Cutting funding to enforcement agencies, including the Equality and Human Rights Commission (EHRC) (Hepple, 2011: 319) and the Health and Safety Executive (HSE) (HSE, 2013: 67).
18. Cutting the EHRC's powers.
19. Introducing a duty on non-economic regulators (which include the HSE and the EHRC) to have regard to the impact of their actions on growth. Despite government denials (BIS, 2013: 3), this duty appears designed to limit the independence of enforcement agencies and their ability to enforce the law.
20. Changing tribunal procedures (Mangan, 2013: 416-417) in such a way as to leave them further weighted against the claimant.
21. Removing the power of employment tribunals to make wider recommendations to employers.
22. Capping the maximum award in unfair dismissal cases to an employee's annual salary, if lower than the general cap (Dickens, 2014: 237).
23. Reducing access to judicial review, including through judicial review regulations which came into force in April 2014 (SI 2014 No 607). Judicial review is there to enable citizens to hold government to account, and in particular when it acts outside the law. Reducing access to judicial review makes it harder to challenge government policies of relevance to employment and equality rights. However, judicial review is also available for certain public sector employees, such as police officers, "who do not have a 'contract of employment' and can show further elements of 'publicness' in the operation of their employment relationship" (Rodgers, 2014: 390).
24. *The "Lobbying Act".* Abbott and Williams (2014) write - "The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 ... imposes tight restrictions on the campaigning and lobbying activities of civil society organisations in the UK, diminishing their capacity to represent the interests of working people ...".

(d) Indications of more fundamental cuts to come

The Liberal Democrat wing of the Coalition has given contradictory signals as to whether they would support further cuts; and the opposition party policies

were not investigated for this report. There are, however, strong indications that the Conservative Party intend, if returned to government, to make deeper cuts to employment protections than those made during this Parliament. In deed, the types of cuts which (it is argued in this report) they could have in mind would take us back to a level of protection in the employment field which existed before the 1970s. The principal stumbling block at the moment is that important employment and equality law protections are required under EU law and so are out of reach of UK governments. This could change, however, if employment laws were "repatriated" back to the UK or if the EU and European Commission continued to move in a deregulatory direction; and, of course, it would change if the UK left the EU. Plans to exit the Human Rights Act 1998 and possibly the European Convention on Human Rights and Fundamental Freedoms (BBC 2013) would, if implemented, also have major and direct consequences for employment and equality law in the UK (as referred to in this report at para. 3.3 (b)); as well as having the potential to undermine the rights, such as freedom of speech and expression, which have enabled groups in the past to successfully campaign for improvements to equality law protections.

1.3 Findings from the study.

Below are summarised the findings from the information that the 137 disabled workers provided. The findings from the document analysis, and how these appeared consistent or inconsistent with the findings from the 137 disabled workers, are set out across the report (under the sub-headings entitled "Document analysis information").

1.3 (a) Negative attitudes towards disabled workers

- *More negative attitudes towards disabled workers.* Attitudes towards disabled workers, on the part of employers and other workers, appear to have become more negative in the last four years. According to one respondent, for instance, talk of "disabled people being lesser than able bodied people seems to have permeated into workplaces".

- *Benefit cheat narratives spilling over into work place*. Appearing to contribute to these negative attitudes, government and other rhetoric about disabled people on benefits being cheats and scroungers seems to be spilling over into the workplace. For example, one NHS worker wrote - "the drip drip negative rhetoric about disability and benefits from the coalition has been incredibly damaging and pervades all".

- *A Burden, lazy, faking, and making others angry*. Negative attitudes which appeared to derive in part from welfare narratives included regarding disabled workers as a "burden", "lazy", or "faking" or exaggerating their illnesses. It also seemed that, whereas adjustments had tended in the past to be regarded in a positive light, they were increasingly resented as "special treatment". For example, one respondent wrote - "I was frequently referred to as 'special' because I needed work-place adjustments and a particular type of chair. This made other employees angry at me".

- *Negative attitudes fuelling discrimination and other ill treatment, as well as job loss.* Negative attitudes appeared to have contributed to rising levels of discrimination; and, in particular, to an increasing reluctance to make reasonable adjustments. In some cases, failures to make adjustments appear to have, in turn, resulted in workers losing their jobs. For example, one woman said that her "previous store manager was wonderful", but she continued - "I struggled when I changed store ... to get my new manager to understand and accept small changes I needed as a disabled employee ... This led to my body being unable to cope and subsequently I lost my job".

- *Increasing reluctance to declare a disability*. An increasing number of disabled workers appeared reluctant to declare their disability for fear that doing so might lead to discrimination from an employer or prospective employer. For example, one respondent stated - "I always try to hide my disability from prospective employers - if it became known, I never got the job".

- *Abuse and hate crimes*. As well as facing more negative attitudes in work, there appeared to be an increased incidence and fear of disability related abuse and hate crime against disabled workers outside work. For example, one respondent wrote - "As an LGBT disabled person, sometimes I really stand out when out with a date and get obvious or exaggerated stares or comments. Me and a date recently experienced a hate crime outside a nightclub where my date was harassed and accused of 'faking' his disability".

1.3 (b) Deterioration in disability employment practice and in job quality

- *Deteriorating disability employment practice.* Most respondents, who expressed an opinion on the matter, indicated that disability employment practice had deteriorated since 2010. The principal reported changes were more negative attitudes (as discussed above at 1.3 (a)) and a reduced willingness to make adjustments (as discussed below), as well as what was felt to be an increase in unlawful discrimination (as also discussed below).

- *General deterioration in terms and conditions and job quality*. There appeared to have been a substantial deterioration in terms and conditions and in job quality. This included increasing job insecurity, work intensification, and abuse and ill treatment in the work place. Theere also appeared to be fewer opportunities for career development, less management support, and an increased reliance upon monitoring and discipline. As indicated in the points below, this general deterioration appeared to have had a disproportionate impact on disabled workers.

- *Adverse impact of zero hours and casual contracts.* It seemed that there was an increased use of zero hours and other casual contracts and that these contracts could cause particular difficulties for disabled workers. For example, a woman who worked in retail stated - "My employer said that I had a zero hours contract ... I had to be on call any and every day for a shift ... no adjustments made despite quoting the disability act till I'm' pink

in the face. Zero hours are not good for ADHD or OCD. It turns you into a complete wreck. If its not the money, its the mental health and constant worry that does".

- *Problems with agency contracts.* Employment agencies appeared reluctant to take on disabled workers and reluctant to make adjustments for those that they took on. For example, one respondent stated - "As soon as an employment agency establish I have a disability, its game over". Another wrote - "working through an agency made one feel almost alien or special but not in a good way. No willingness to accommodate the disabled staff".

- *Problems with self-employment*. For some disabled workers, self-employment was an ideal solution, as it allowed them to adapt their schedule and work load to their condition. However, in most of the cases referred to, there appeared to be substantial problems with self-employment, including being forced into it, low income, and limited employment rights. Some felt that they had been forced into self-employment as a result of the threat of benefit sanctions, and found that their condition made it hard or impossible to do the work that they were required to do. In other cases, the disabled worker had been dismissed by their employer and then hired back as a "contract worker" to do a similar job, but without the employment rights that they had previously enjoyed (with this appearing to constitute a form of sham self-employment). Some simply could not earn enough to get by on. For example, a voluntary sector worker stated - "Almost impossible to earn enough to live on via self-employment as my condition restricts how much I can do ... ".

- *Work intensification*. A common theme among respondents was workers in general being expected to work harder and/or longer, with this having particular adverse impacts on disabled workers. One respondent, for example, stated - "At a different contract I was forced to work more hours than I wanted to, totalling some 96 hours in one week... the shifts were

inhuman, we were forced to sign a piece of paper to say the EU law against long hours did not affect us and we waived our rights".

- *Fewer career development opportunities and reductions in training.* It appeared that organisations in the last four or five years had in general cut the resources put into staff training and development; and that, in some cases, the career development needs of disabled workers had not been taken as seriously as those of other staff. For example, one respondent reported - "In my most recent performance review, my manager just said 'we don't need to bother looking at development or career aspirations for you'". Some disabled workers also appeared to have been excluded from training as a result of failures to make the training accessible.

- *Reduction in support for employees*. Employee support in general, and (as referred to across these findings) reasonable adjustments in particular, appear to have been reduced. As well as adjustments being refused, it seems that getting agreement to them could involve a considerable battle and/or leave the worker feeling humiliated. One public sector worker, for example, stated - "It has been humiliating and dehumanising, having to describe difficulties in detail, just to get a chair".

- *Increased emphasis on monitoring and discipline.* While support, and also engagement with the workforce (such as through consultation), appeared to have in general been cut, the focus on monitoring and discipline seems to have increased. For example, a man working for a "billion dollar multinational" wrote - "Firm spent four years trying to force me out through various measures including disciplinary/capability procedures ... Very senior supervisor who initiated this was explicit (when no witnesses) that this was solely due to my disability, which he described as 'a threat to my schedules'". It seemed that there could have been a general switch across respondent organisations from attempting to improve performance through promoting commitment, and providing adjustments and other support, to attempting to improve performance through fear of dismissal.

1.3 (c) The impact of the public spending cuts

Public sector spending cuts appear to have had a number of negative impacts on disability employment practice, including the following:

- *Reduced willingness to make adjustments in the public sector.* The cuts appear to have led to a reduced willingness to make adjustments. A public sector worker, for example, reported - "I believe that my employer is becoming less willing to make any adjustments, let alone those that cost money". In some cases, adjustments only seem to have been made after a struggle. For example, apparently referring to the impact of the cuts on adjustments, a local authority worker wrote - "my ex employer was very difficult about reasonable adjustments, tried to make me move to a building with stairs and no lift. Took my trade union and the equalities officer to sort them out".

- *Knock on effects on charities.* Public sector cuts also had a negative affect on adjustments in charities which were dependent upon public sector grants and contracts.

- *Discriminatory redundancies and other dismissals*. It seemed that tighter budgets could have made employers less willing to make the adjustments that would have enabled some disabled workers to continue in employment. For example, referring to the cuts, one public worker wrote - "Occupational health nurses used to recommend adjustments to capability procedures to take account of disabilities. The latest nurse told me 4 weeks ago that they don't do that". In addition, it seemed that some employers might have used department wide redundancy situations as an opportunity to dismiss disabled workers whose disabilities were perceived to have become a problem, and to do so with less likelihood of successful tribunal action than would have been the case if dismissed under normal circumstances i.e. if the dismissal had not in effect been hidden amongst the redundancies.

- *Moving to the private sector*. Some of those who were made redundant, or whose jobs were outsourced, appear to have moved from situations in which there was reasonable support for workers with disabilities to private sector ones in which there was little or none. For example, one respondent stated - "I worked for a LA (local authority) specialist team which was outsourced and cut. I left so I could stay in the public sector and because the outsourcing company's reputation on disability was bad".

- *A general deterioration in disability equality practices.* There was a sense from some respondents that disability had, in the wake of the cuts, come to be regarded as a "luxury" that it was now difficult to afford. Cuts to disability equality practice referred to included cutting disability equality training for staff, cutting consultation with disabled workers, and cutting positive action plans which had been set out in equality schemes.

- *Cutting Remploy*. Without Remploy, a number of respondents were struggling to find suitable or any work. One respondent, for example, stated - "without the regular employer (Remploy) work is almost impossible to find at a reasonable wage now ...".

1.3 (d) Legal duties could have been regularly breached and breaches could have been increasing

- *Legal protections had contributed to good practice.* There were indications that long standing legal protections had contributed to good disability equality practice and had enabled organisations to recruit and retain valuable staff. This was particularly evident in the case of reasonable adjustments. While at least some adjustments might have been made without the existence of the duty, it appeared that the duty's existence quite often contributed to decisions to make them. It also appeared that other legal duties had made a positive difference to disability employment practice, including health and safety law, unfair dismissal law, and the Public Sector Equality Duty (PSED). For instance, one respondent seemed to imply that the PSED had encouraged disability equality training for line

managers, and another that it had encouraged the involvement of disabled workers in the production of HR policies.

- *Possible increase in unlawful discrimination.* The information provided seems consistent with (though far from providing reliable evidence of) there having been widespread and frequent breaches of anti-discrimination laws; and with there having been a general increase in such breaches during the last four years. It appeared that there may have been discrimination in recruitment, failures to make reasonable adjustments (including outside recruitment), and acts which would have constituted "combined" discrimination (under the not brought into effect provisions of the Equality Act 2010).

- *Failures to make reasonable adjustments*. Supporting a conclusion that there had been breaches of the reasonable adjustments duty, some indicated that their employers had refused to make any adjustments. In addition, some of the adjustments that respondents referred to having been refused appear to have been both inexpensive and important to the individual's job; and, therefore, it is hard to imagine that they would not have been considered "reasonable" in law.

- *Discrimination in recruitment.* There appeared to be a quite widespread feeling among respondents that referring to a disability in an application form or at interview resulted in not being offered an interview or post. There was also particular concern about applications which required that the applicant state whether or not he/she had a disability, and did so without indicating that the information would not be available to those short-listing for the interview. It seemed possible that such application forms could be in breach of the EqA prohibition (with exceptions) on asking about health or disability before offering a job, since these applications did not appear to fulfil the criteria for being excepted.

- *Combined discrimination*. There were six cases identified which might have constituted 'combined discrimination' (see above, para. 1.2 (c)) if the Coalition had brought the combined discrimination provisions in the Equality Act into effect. For example, one respondent suggested that being a disabled transgender person contributed to ill-treatment, and wrote - "My gender (transgender) may have also been a factor in the way I was treated by my manager ...".

1.3 (e) Reasons for not making adjustments

As the research literature indicates the importance of adjustments for disabled workers (e.g. Newton et al, 2007), it seems worthwhile to attempt to better understand why they are sometimes not made. Set out below are what appeared from the respondents answers to have been some of the relevant factors and processes:

- *Organisational failure to understand or accurately represent the legal requirements.* From the respondents' accounts, employers appeared in some respects to have underestimated what the duty required or to have understated what it required when providing a justification for not making adjustments. An misunderstanding/misrepresentation which appeared to have been instrumental in a number of cases was that it was lawful to dismiss someone if reasonable adjustments could not completely alleviate the effect of the disability on the worker's ability to do his/her job. Most clearly illustrating this, one respondent, referring to being dismissed, stated - "final conclusion was that yes they were doing it because of disability, but that they were legally allowed to as reasonable adjustments could not completely alleviate effects of disability... ".

- *Changes to Access to Work.* While Access to Work had played a major role in supporting good practice in relation to adjustments, recent changes may have reduced its usefulness. A local authority worker, for instance, stated - "Access to work was a waste of time - they assessed my need for a lift, agreed it then didn't fund it as the government decided to stop funding building adaptations".

- *Cuts to employment law protections could have reduced compliance with the reasonable adjustments duty*. Of particular note, there were indications that weakening the Public Sector Equality Duty (PSED) (through watered down specific duties) could be beginning to reduce the pressure on public sector organisations to encourage good disability equality practice. One respondent, for example, stated - "The PSED has been weakened dramatically. Consultation has decreased greatly, DET (disability equality training) is now all but non-existent and recruitment of disabled people is now even lower than it was before 2010". In addition, there were indications that some organisations could be taking health and safety issues less seriously, with for example, one organisation being said to be conducting fewer health and safety assessments. This could have impactions for adjustments in so far as the research literature indicates that assessments can lead to what in effect are adjustments, such as to work stations (Harwood, 2014: 1517).

- *Legal protections no longer carrying the same weight.* There were indications that government disparagement of legal protections, including framing them as "red tape", could have led to some employers taking their legal obligations less seriously. For instance, one respondent wrote - "I invoked the grievance procedure when one of my colleagues reported me for taking too long to go to the toilet. They backed off but tried other avenues. DDA (Disability Discrimination Act) afforded some protection, but they became less leery of it after 2010."

1.3 (f) Becoming harder to enforce the rights which remain

The indications were that many of the respondents who felt that they had been discriminated against would have wanted to take legal action if doing so was not so difficult and/or if the prospect of winning did not appear so slim. There was also the impression that individuals felt that enforcing their rights was becoming more difficult or had become impossible. Some of relevant issues included the following.

- *Problems with using the grievance procedure.* While there is now considerable legal pressure to go through grievance procedures before taking legal action, there was little indication that use of grievance procedures had brought about a satisfactory resolution for the worker in a significant number of case. In general, there appeared to be some cynicism towards the procedures, as in the case of the public sector worker who wrote - "I accepted redundancy and didn't bother putting in for grievance as they would never have listened to me anyway".

- *Problems with legal action*. Some had taken a case to tribunal and won; and, in other cases, it appears that the threat of legal action helped to bring about a desired result. For most, however, taking legal action did not appear to have been regarded as a realistic option. Problems included lack of access to legal support; while health problems, which in a number of cases were said to have got worse as result of the discrimination complained of or the battle with their employer which followed, ruled out beginning a lengthy legal action. For instance, referring to the option of taking legal action, one respondent wrote - "I just left, too worn out to even consider that". However, the problem which appeared to be standing in the way of legal action in most cases was the tribunal fee. For example, referring to legal action, one respondent stated - "I haven't taken any, and know I could never afford it now huge fees are involved".

- *Reduced deterrent effect on employers.* That employees are unlikely for a variety of reasons to take legal action seems likely to reduce the deterrent effect of legal protections. This is what a respondent appeared to have in mind when, with reference to legal action, she commented - "too much hassle to do and many employers now know this"

FULL REPORT

2. METHOD

The principally qualitative study investigated the impact of the Coalition government's policies, and the Coalition's time in office, on disabled workers in the UK.

2.1 Data collection

There have so far been six principles sources of data, with two additional sources planned for phase two of the study.

2.1 (a) Data collected so far

- *Information from disabled workers*. Information from 137 disabled workers, consisting of: (1) The answers given in a self-selecting, self-administered, qualitative questionnaire (with online and hard copy versions), which enabled the respondent to provide as much information as he/she wished about his/her experiences as a disabled worker. A copy of the survey is provided as Appendix A to this report. (2) The answers to follow-up questions that the researchers emailed to those survey respondents who indicated a willingness to answer follow-up questions. It should be noted that spelling/typo corrections, and punctuation changes, have been made to some survey and emailed answers. (3) Information from in-depth interviews. The interviews have only just begun and more results from these will be published later.

- *Coalition government documents.* Coalition government documents, including policies, statements, and reports; and Hansard records of parliamentary debates, and published media interviews with Coalition ministers.

- *Overlap between organisations.* Please note that a significant percentage of the public authorities were included in a number of the samples, such as among the local authorities from which redundancy procedures were collected and those from which other documents were collected. Therefore, the totals (such as 123 UK public authorities in the next point below) are less than a total that would be reached by adding together the individual totals (such as 86+25+20).

- *Post-2010 public authority documents.* Organisational documents from 123 UK public authorities (that the author had collected for other research purposes between 2012 and 2015), consisting of: (1) Redundancy and redeployment policies from 86 UK local authorities randomly selected from the total population of UK local authorities. (2) Around 250 employment practice related documents from 25 non-randomly selected local authorities (with overlap with the random sample); and from 20 other non-randomly selected public authorities, including schools, universities, museums, and government departments. These documents included organisational strategies and policies, reports, and committee minutes.

- *Pre-2010 public authority documents.* Around 90 organisational documents collected (also for other research purposes) before the Coalition came to power from 30 public authorities. These will provide some limited basis for comparison, not withstanding that the organisations were not a representative random sample of a relevant wider population.

- *Freedom of Information request responses.* Responses from Freedom of Information Act requests (sent in February 2015) to 20 of the local authorities from which documents had been collected previously. The information requested was that published to comply with the disability strand of the Public Sector Equality Duty specific duties, and indicates, for example, the proportion of disabled employees made redundant relative to the proportion of disabled employees in the organisation's workforce.

- *Literature review.* A review of the existing research literature, covering, in particular, literature on coalition policies, the labour market, employment and equality law and practice, industrial relations, and disability studies. Some of the review findings are referred to in this report. However, the review itself will be published separately.

2.1 (b) Data collection planned for phase two

- *In-depth interviews.* In-depth telephone and face-to-face interviews with those who filled-in the qualitative survey (referred to above at 2.1 (a)) and indicated a willingness to take part in follow-up interviews.
- *Quantitative survey.* A quantitative survey to test the generalisability of some of the major conclusions drawn from the qualitative survey.

2.2 Data analysis

2.2 (a) Analysis so far

The qualitative survey responses, answers to follow-up questions, and the organisational documents, are being analysed using the same "open-grounding" approach as adopted in an earlier piece of research (Harwood, 2014: 1516). This approach draws on grounded theory and discourse analysis and includes three principal iterative elements: contextual focus analysis, generative focus analysis, and evaluative focus analysis. Evaluative focus analysis, for example, addresses threats to validity, and involves, among other techniques, searching for disconfirming evidence; triangulation i.e. using different data sources and methods to test and strengthen the conclusions drawn from individual sources and methods; and "member checks", such as, for example, asking interviewees to comment on the interpretation of their interviews. In addition, the numerical elements of organisational documents (such as workforce profiles) are being analysed using simple descriptive statistics.

2.2 (b) Future analysis

There is still a considerable amount of analysis to do on the data collected so far. This includes further analysis of the organisational documents, and better integrating the findings from these documents with the findings from the qualitative survey. As regards the qualitative survey, there will need to be "member checks" of the findings. The data still to be collected will also need to be analysed, including that from the planned in-depth qualitative interviews and from the quantitative survey.

2.3. Ethics

Avoiding harm to participants is the paramount methodological consideration. In furtherance of this, no interviews will be conducted without informed consent; and extracts from interviews and surveys will all be anonymised to hide the identities of respondents and employing organisations. While the unabashed aim of the study is to contribute to improvements in working conditions, this contribution should be made through robust research and valid findings.

2.4 Study limitations

The study has so far identified a range of impacts on disabled workers, as well as processes and factors which appeared to be implicated in these impacts. However, the survey sample was not designed to be representative of a larger population, nor was the sample of organisations from which documents were collected, with the exception of the 86 local authorities from which redundancy policies were obtained. Therefore, it is assumed that at most the findings to date can be used as the basis for tentative conclusions about UK disabled workers as a whole. Some of these tentative conclusions will be tested later using other methods, including more quantitative ones (as referred to above at 2.1 (b)). In addition, any conclusions relating to the individual situations and organisations in the study need to be treated with some caution. This is, in particular, because there has not been an opportunity to adequately triangulate and otherwise help verify the accounts given. For example, the survey is a survey of disabled workers from possibly as many organisations as there are respondents, whereas it would have been useful to have a range of perspective from within some of the organisations, such as from HR officers and union representatives. Having said that, earlier research (Harwood, 2014) indicates that many HR officers and union representatives also felt that Coalition policies were having some of the impacts that disabled workers in this recent survey identified.

3. THE LEGAL CONTEXT

3.1 Legal protections preceding the Coalition.

3.1 (a) Employment equality protections

The legal protections of most relevance to disabled workers are provided in the Equality Act (EqA) 2010, passed under the previous government. These protections include protection from direct discrimination, discrimination arising from disability, indirect discrimination, harassment and victimisation. However, the protection (now under the EqA but previously under the Disability Discrimination Act 1995) which appears - from reading across the literature (e.g. Goldstone and Meager, 2002; Bell, 2015; Foster and Fosh, 2010; Harwood, 2011, 2014) - to have had the greatest positive impact on disabled workers has been the duty to make reasonable adjustments. The Duty provides that where an employer's provision, criterion or practice, or physical feature of his/her premises, puts a 'disabled person' at a substantial disadvantage, compared to persons who are not disabled, the employer has a duty to take such steps as it is reasonable for him/her to have to take to prevent that disadvantage. The EqA *Employment Statutory Code of Practice* (at para 6.33) provides a non-exhaustive list of reasonable adjustments, including, for example, 'making adjustments to premises'; 'altering ... hours of work'; and 'transferring ... to fill an existing vacancy'.

While the Reasonable Adjustments Duty has proved to be a valuable protection, and a spur to good employment practice, there appear to have been problems arising from the wording of the duty, and how the courts have interpreted it. As regards the wording, there is, for example, no entitlement to reasonable adjustments - however substantial the disadvantage - unless the individual meets a quite restrictive definition of disabled. In addition, the employment reasonable adjustments duty only arises when a particular disabled person experiences substantial disadvantage and the employer knows, or could reasonably be expected to know, that the individual in question is disabled and is likely to be placed at a substantial disadvantage. In contrast, the services reasonable adjustments duty is owed to disabled people at large and is more anticipatory (e.g. Monaghan, 2005: 162), in the sense of requiring that a reasonable adjustment (such as providing wheelchair access to a department store) is made before a particular disabled individual is known to have been placed at a disadvantage. As regards how the courts have interpreted the employment duty, Bell (forthcoming: 1) argues that "the

potential contribution of the duty remains constrained by restrictive interpretations of the law". In addition, judgments over time have, in some respects, entailed a lightening of the obligations on employers. For example, as argued elsewhere (Harwood, 2014: 1514) -

"in *Mid Staffordshire General Hospitals NHS Trust v Cambridge* [2003] IRLR 566*,* the Employment Appeals Tribunal (EAT) determined that a 'proper assessment of what is required to eliminate a disabled person's disadvantage is ... a necessary part of the' Reasonable Adjustments Duty (para 17). Other judgments disagreed, until in *The Royal Bank of Scotland v Ashton* [2011] ICR 632, the EAT argued that 'it is irrelevant to consider the employer's thought processes or other processes leading to the making or failure to make a reasonable adjustment' (para 24). This would appear to reduce the statutory encouragement to take the arguably common sense step of considering what adjustments would be effective". In addition to apparent problems with the wording and interpretation, "it also appears from the literature (e.g. Adams and Oldfield 2012) that adjustments have quite often not been made when there may well have been a duty to make them; and when there might not have been a duty (such as where an employee did not meet the legal definition of disabled) but making them would have been beneficial" (Harwood, 2014: 1513).

The EqA Public Sector Equality Duty (which replaced a number of strand specific duties, such as the Disability Discrimination Act Disability Equality Duty) also appears to have improved employment practice towards disabled workers (Pearson et al, 2011: 249). The various Equality Duties originated with the 2000 Race Equality Duty brought into tackle institutional discrimination following the MacPherson report (Macpherson, 1999) into the police investigation of the racist murder of Stephen Lawrence. The current EqA Public Sector Equality Duty in essence requires that subject public authorities (such as local councils) have due regard to the need to promote equality of opportunity, to end discrimination, and to foster good relations (between those with and without protected characteristics).

3.1 (b) Non-equality specific employment law protections

In addition, a number of non-equality employment law protections have been of particular relevance to disabled workers. For instance, unfair dismissal case law has provided encouragement for employers, when using absence as

a redundancy selection criteria, to take into account that someone's absence may be the result of a disability (*Harding v Eden Park Surgery*, 1100367/05 ET, in Mansfield et al. 2010, para. 31.06). Further, Harwood (2014: 1517) found that impact assessments, undertaken in compliance with health and safety law, had played a role in identifying the need for disability adjustments, such as to work stations; and that "the requirements (under unfair dismissal law and TULRCA 1992), to consult unions or others on redundancies, appeared from some interviews to have contributed to the reasonable adjustment of excluding some disability related absence when using absence as a redundancy selection criteria" (Harwood, 2014). For those who are transferred from the public to the private sector, where research indicates disability employment practice is in general poorer (e.g. Roberts et al, 2004), the Transfer of Undertakings (Protection of Employment) Regulations (TUPE) provide at least some short term maintenance of some of the terms and conditions previously enjoyed in the public sector, including those of relevant to adjustments, such as disability leave. Non-employment specific protections also have important implications for employment protection. This includes, of particular note, the European Convention for the Protection of Human Rights and Fundamental Freedoms (Bowers, 2009: 609-626), given domestic effect through the Human Rights Act 1998. As Deakin and Morris (2012: 54) point out - "Convention rights ... must be taken into account by courts and tribunals when interpreting labour legislation and, in certain contexts, when developing rules of the common law". Convention rights have, for example, protected the right to join and be represented by a trade union (Deakin and Morris, 2012: 817). It seems that union membership can be of particular value for disabled workers in that disabled workers are more likely to be union members than non-disabled workers (TUC, 2014: 3) and because unions can be instrumental in, for example, negotiating reasonable adjustments (Foster an Fosh, 2010).

3.2 Legal protections that the Coalition cut

3.2 (a) Stated justifications for the cuts

From almost the word go, the Coalition has been cutting (Hepple, 2011; 2013) what it has described as "red tape" (BIS, 2011) and what might alternatively be described as "basic and hard won employment rights" (Harwood, 2014:

1514), though there have been a small number of significant improvements, including the extension of the right to request flexible working, shared parental leave, and banning zero hours exclusivity clauses (BIS, 2015). The principal stated justification for cutting employment law protections has been the need to stimulate economic growth. For example, according to Business Minister, Michael Fallen - "Reducing the number of rules and regulations that apply to business is absolutely central to the Government's vision for Britain, removing barriers to economic growth and increasing competitiveness" (BIS, 2012). However, as argued elsewhere (Harwood, 2014: 1515), the government has presented limited empirical support for its case that cutting legal protections stimulates growth, besides, in vague terms, citing what 'businesses say' (e.g. BIS 2013)". In reality, the research evidence indicates that reasonable levels of employment law protection are more conducive to economic growth than low levels (e.g. Deakin and Sarkar, 2008; Crouch, 2012). This is in part because cuts to employment rights make it easier to hire and fire workers, and so reduce the organisation's incentive to develop employee skills and knowledge through training and development. Further, short-term employment, and the ongoing threat of being dismissed, reduces the incentive and opportunity for employees to develop commitment towards, engagement with, and trust in, their employer, with research indicating (e.g. Christian et al., 2011; Svensson, 2012; Rees et al, 2013: 2780) that these employee characteristics are associated with improved performance. Indeed, the high turn over of workers facilitated by the UK's low employment protection, "liberalised" regime, might help explain low rates of productivity in the UK compared to comparable countries (add ref).

3.2 (b) Some of the principal cuts/ diminutions in rights

Set out below are some of the principal Coalition cuts to employment law protection; along with some of the protections in the Equality Act that it decided not to introduce, and some of the ways in which it has weakened enforcement of the protections which remain.

- *Unfair dismissal.* Doubling the normal qualification period for protection from unfair dismissal from one year's continuous employment to two years.

- *Health and safety.* Cuts to health and safety law protections. Opposing these changes, Turner in the Lords argued that the "the laws relating to work place health and safety could be returned to where they were almost a century ago" (Turner, 2013).
- *Combined discrimination.* Not bringing into effect the Equality Act (EqA) 2010 provision on combined discrimination, which, in essence, would have provided protection against discrimination on grounds of being, for example, a black disabled person. Uccellari (2010: 37) explains the situation (as it would have been if the provision came into effect) - "A person claiming that s/he has experienced combined discrimination must be able to show that the *combination* of protected characteristics was an effective cause of the treatment".
- *TUPE regulations.* Weakening the Transfer of Undertakings (Protection of Employment) regulations (e.g. McMullen, 2014).
- *The Public Sector Equality Duty.* Watering down, towards the point of irrelevance, the specific duties under the Public Sector General Equality Duty (the requirements of which are touched on above at 3.1 (a)). The specific duties are 'made' (through statutory instruments) for the purpose of assisting public authorities in meeting the General Duty. Some of the principal differences between the current and predecessor specific duties are as follows:

1. The principal requirements under the predecessor Disability Equality specific duties were to: publish, review, and revise, a Disability Equality Scheme (which is an often detailed plan of how the authority intends to promote equality in relation to employment and service provision); involve disabled people in the Scheme's development; take certain of the specified types of steps that the Scheme said would be taken; and report annually on progress. Except with regards to taking specified steps, comparable requirements existed under, for example, the Race Equality specific duties.

2. The principal requirements under the Coalition's specific duties are to "publish information to demonstrate compliance with" the general duty; and every four years "prepare and publish one or more objectives". The reference to "one or more" seems to mean that a public authority could be

compliant if it just published one objective touching on one aspect of one equality strand (such as, for example, "increase the number of women in the council's IT department"), and ignored, in its objective setting, other aspects of that strand and all the other eight equality strands (including disability). In addition, there is no requirement on a public authority to take any steps that it says it will take. So, to take the previous example, there would be no requirement for it to do anything at all to increase the number of women in its IT department.

- *Public sector procurement.* Failing to use the regulation making power (section 155(2)) in the Equality Act to introduce a specific equality duty directed at promoting equality through public procurement. In deed, the government has introduced a duty which appears to be aimed at limiting the use of procurement to promote equality. Specifically, the Revised Best Value Statutory Guidance (DCLG, 2015) states - "Authorities should avoid gold-plating the Equality Act 2010 and should not impose contractual requirements on private and voluntary sector contractors, over and above the obligations in that Act". This in effect seems to mean that good equalities practice is contrary to government policy. With so many public authority functions being contracted out, public procurement would appear (absent this guidance) to have the potential to be a critical tool for trying to ensure that private sector equality practice (in employment and service provision) does no fall a great distance below that in the public sector.
- *Public Sector Socio-economic Duty.* Not introducing the Equality Act 2010 Public Sector Socio-economic Duty, which was "intended to oblige relevant bodies to consider how their strategic decisions might help to reduce inequalities associated with social economic disadvantage" (Burnham, 2010: 169).
- *Employer liability for third party harassment.* Abolishing employer liability for failure to take reasonably practicable steps to prevent third parties (such as customers or clients) repeatedly harassing an employee.
- *Micro-business exemptions*. Exempting "micro-business" (i.e. those employing up to 50 staff) from being subject to important statutory employment protections.

- *Agricultural Wages Board.* Abolishing the Agricultural Wages Board which set minimum wages and other minimum terms and conditions for agricultural workers.
- *Employee Shareholder Status.* Introducing of the Employee Shareholder Status which is shorn of important statutory protections in return for a minimum number of company shares (Prassl, 2013).
- *Questionnaire procedure.* Abolishing the questionnaire procedure, which provided a mechanism whereby employees could obtain more information from an employer to determine whether an unlawful act had taken place and to use in any subsequent proceedings. Stowell, for the government, argued in the Lords (2013: column 1326) that - "Individuals will still be free to seek information from an employer or service provider about alleged discriminatory conduct without the statutory process". This would seem to be correct in the sense that we are all free to *seek* information from, for instance, President Putin. However, the point about the questionnaire procedure was that it provided a statutory incentive for the employer to provide an honest and non-evasive answer.
- *Tribunal fees.* Introducing tribunal fees, which, according to the TUC, will "price working people out of access to justice" (TUC, 2011, 18).
- *Legal advice services.* Cutting funding to legal advices services (e.g. Sommerlad and Sanderson, 2013). It also appears to have been made harder for unions to assist individual members with enforcing their employment rights, including as a result of cuts to facilities time (TUC, 2014: 23; Labour Research Department, 2014) following government ordered reviews (e.g. DES, 2013).
- *Enforcement agencies*. Cutting funding to enforcement agencies, including the Health and Safety Executive (HSE) (e.g. HSE, 2013: 67) and the Equality and Human Rights Commission (EHRC) (Hepple, 2011: 319); and cutting the EHRC's powers. In addition, the Coalition has Introduced a duty on non-economic regulators (which include the HSE and the EHRC) to have regard to the impact of their actions on growth. The government (BIS, 2013: 3) has stated that it "is clear that a growth duty will not compromise the independence of regulators or undermine the importance of the

essential protections that they are there to deliver". This argument appears difficult to sustain. For example, a duty to have regard to growth (with the government assuming that enforcement undermines growth) would appear to put pressure on the Food Standards Agency to implement a more light touch food safety regime, with an increased likelihood that problems such as BSE will recur.

- *Tribunal procedures.* Changing tribunal procedures (e.g. Mangan, 2013: 416-417), such as granting tribunals the power to reject claims for failure to supply minimum information. These changes to procedure seem to further weight them against the claimant.
- *Tribunal powers.* Removing employment tribunals' power to make wider recommendations to employers i.e. wider than those just aimed at reducing the negative impact on the individual claimant. This power has principally been used to recommend equalities training for managers or that policies be reviewed.
- *Tribunal awards.* Capping the maximum award in unfair dismissal cases to an employee's annual salary , if lower than the general cap (Dickens, 2014: 237).
- *Judicial review*. Reducing access to judicial review, including through judicial review regulations which came into force in April 2014 (SI 2014 No 607). Judicial review is there to enable citizens to hold government to account, and in particular when it acts outside the law. Reducing access to judicial review makes it harder to challenge government policies of relevance to employment and equality rights. However, judicial review is also available for certain public sector employees, such as police officers, "who do not have a 'contract of employment' and can show further elements of 'publicness' in the operation of their employment relationship" (Rodgers, 2014: 390).
- *The "Lobbying Act".* Abbott and Williams (2014) write - "The Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 ... imposes tight restrictions on the campaigning and lobbying activities of civil society organisations in the UK, diminishing their capacity to represent the interests of working people ...".

3.3 Indications of future cuts

3.3 (a) Employment and equality law protections

Important equality and employment law protections are required under EU law and, therefore, have remained out of reach of the Coalition government. Among these, for example, has been the reasonable adjustments duty. However, the Prime Minister, David Cameron, has indicated an interest in "repatriating" employment law back to the UK (e.g. Miller, 2011) i.e. leaving the EU with few if any powers in relation to employment law. Further, there are strong indications that any future Conservative government would use any such repatriated power to weaken or abolish important employment and equality law protections. Cameron has, for example, called for an EU review of the Working Time Regulations (Phillips, 2013), with a view it seems to abolishing or weakening them; and has made a start with the government's own review (BIS, 2015). Further, as argued elsewhere - "the 'labour reforms' that the 'Troika' of the European Commission, European Central Bank, and International Monetary Fund have imposed on Greece, Ireland and Portugal (e.g. Barnard, 2012) suggest that the EU itself could in future start dismantling the employment protections in EU directives". It also seems that the government has in its sights at least some of those laws within UK competence which it was unable to deal with during this Parliament. This might involve, for example, introducing "no fault dismissals", a pet project (eg. Eccleston, 2012) of the Chancellor, George Osborne, which the Liberal Democrat part of the Coalition may have spiked. The "New New Right" within the Conservative Party, which Lakin (2014: 71) argues "presents a challenge to the dominant contemporary Cameronite interpretation of Conservatism", appears even more hostile to employment law protections (Lakin, 2014: 77) than the current Conservative ministers. It is, therefore, not clear that there is a powerful current of thought within the Conservative Party which might oppose further employment law cuts. There are also plans to make it harder for trade unions to take industrial action (e.g. Veale, 2014). This is despite UK anti-unions laws, unrepealed since Margaret Thatcher's government, already putting the UK at odds with "international human rights law under the norms of

the European Charter and the International Labour Organisation" (Bogg and Ewing, 2014: 221).

Intentions to weaken or abolish more equality law protections are not made as explicit as intentions to abolish general employment law protections. However, these might be thought to be quite clearly indicated in Coalition documents that Conservative ministers signed off on, as well in statements that they have made. This includes an indicated hostility to "special treatment" for members of equality groups. For example, the *Equality Strategy* states (H.M. Government, 2010: 8) - "This strategy sets out the Government's new approach to tackling inequality: one that moves away from treating people as groups or 'equality strands' and instead recognises that we are a nation of 62 million individuals". Recognising that people are part of groups or perceived as such, and that this can have important adverse consequences for them, does not exclude also recognising and treating them as individuals. Therefore, this statement seems to imply that it is somehow wrong to recognise that people are also parts of groups. This position fails to acknowledge that society discriminates against or otherwise disadvantages particular groups and members of these groups. For example, Stephen Lawrence was murdered in large part as a result of being black and his killers being racist, not as a result of his individual biography (which his killers did not know about). As equality law is based upon the recognition of equality strands, moving "away from" an approach based upon equality strands (as the Equality Strategy argues should be done) would appear to entail moving away from equality law protections. Having said this, there are mixed messages about equality from Tory ministers in the Coalition. There was considerable ministerial sympathy towards same sex marriage (Clements, 2014), with little sympathy towards equality in the employment field, and little recognition that discrimination is even an issue for benefit claimants. Those on benefits appear to becoming, to use Standings term, modern day "denizens" (Standing, 2014), lacking the normal rights of citizenship.

3.3 (b) <u>Protections for individual freedoms</u>

It also seems that the Conservative Party are committed to repealing the Human Rights Act (HRA) 1998 and might exit from the European Convention on Human Rights and Fundamental Freedoms (BBC, 2013). The Convention was introduced in part to help prevent a repetition of the abuse of individual freedoms by the over-mighty state which occurred across Nazi occupied Europe. In a remarkable inversion of the truth, the Convention and the HRA have been presented in recent years in the British media (e.g. Liberty, 2012: 4-5) as somehow allowing the over-mighty state to interfere in individual freedoms. In addition to being of direct relevance to employment law (as referred to above at 3.1 (b)), the Convention "guarantees" freedoms which are essential to those fighting for improvements in equality and employment law protections. For example, recent moves to charge protestors around £10,000 to hold a peaceful demonstration (Weaver, 2015) bode ill for disability and other protest groups which do not have the means to pay for the right to protest; and, therefore, it is hoped that attempts to charge will be ruled as incompatible with Article 10 (which protects freedom of expression). Arguably, the public should view with the upmost suspicion the motives of any Party which wants, if elected to government, to abolish the constitutional limits on its ability to mistreat its citizens. This is particularly the case when the Party, when in government, cut access to judicial review (e.g. James, 2015), which is there to help ensure that governments act within the law.

4. FINDINGS

The findings set out below are principally based upon the analysis of information from 137 disabled workers (see para 2.1 (a) above). However, these findings are set along side, and in some cases compared with, the findings so far from the ongoing analysis of documents from 141 public authorities (also referred to at para. 2.1 (a)). The findings from the qualitative survey of disabled workers, and the follow-up questions to the respondents, are provided under the subheading: *Disabled worker information*; and the findings from the document analysis are under the sub-heading: *Document analysis information*. As referred to next, there are benefits from, as well as problems with, combining these data sources in a study.

The national picture

The study did not provide an evidential basis to draw general conclusions about the impact of Coalition policies on employment levels for disabled workers. However, so as to provide context for the findings about workplace experiences, it is worth looking at what light the research literature casts on changes in employment level. Of particular note, the UK/GB/England wide evidence on how the disability employment gap has changed since 1998 is contradictory and only goes up to 2012 (Baumberg et al., forthcoming). The disability employment gap is the percentage point difference in the employment rate between those who are disabled and those who are not (Jones and Wass, 2013: 987). According to Baumberg et al. (forthcoming: 18) - 'Until the discrepancy in trends is explained, we cannot be confident that the disability-related employment gap has fallen...'. Baumberg et al's figure 2 (LLSI Employment Gap by Survey (Sample 1) (1998-2012), does seem to show - (a) the Health Survey for England indicates that the gap has increased since 2010; (b) the Labour Force Survey indicates that the considerable closing of the gap since 1998 has stalled since 2010; and (c) the General Household Survey stops at 2010. However, Jones, one of the authors, explains - "since there is variation in the data year on year I wouldn't be very confident in making any conclusions based on data from a single year e.g. HSE" (email, April 2015).

4.1 What document analysis added.

4.1 (a) Relationship between analysis of the disabled worker information and the document analysis

Among other purposes, the document analysis enabled investigation of whether some of the factors, processes, and impacts, identified from the qualitative survey, were indicated in other organisations and other situations. Where they were indicated, this might be argued to add some limited incremental weight to the speculative generalisations drawn from the qualitative survey. For example, as discipline appeared (from the limited information provided) to have in general been pushing out support in the organisations referred to in the survey, and among the organisations from which documents were obtained, the speculative generalisation about UK

disabled workers in general facing more discipline becomes a bit less speculative. In addition, the findings from the documents might be thought to provide some possible, but even more limited, support for the findings from the survey and vice versa. For example, since there tend to be management trends within and across sectors - such as those resulting from changes in notions of good practice - finding a trend among one set of organisations (such as those from which documents were obtained) might lend some support to a conclusion that the trend existed among a different set of organisations (such as those referred to in the survey). However, these are non-representative samples, and the names of the organisations referred to in the qualitative survey were not known (and might not have overlapped much or at all with the organisations from which documents were obtained). Therefore, the extent to which the survey and document analysis facilitate triangulation of findings should not be overstated.

4.1 (b) Document analysis and organisational practice

HR policies are, of course, more of a statement of what should happen than a record of what does happen. It would be surprising, however, if there were no significant associations between these phenomena. For example, if a policy states that employees are permitted to be accompanied by a union representative at absence management meetings, and an employee who has been instructed to attend such a meeting has been sent a copy of the policy, then this provision in the policy may well encourage the employee to seek out his/her union representative. Organisational policies might also, for example, give some idea of organisational values. This is not so much because some include a statement of "values" - bearing in mind that such statements can be designed to help replace dominant values with preferred ones - but more in that values can sometimes be discerned from the focus of policies, the language used, and the provisions made. Insights into organisational practices and beliefs can also be gained from reports to committee proposing policies or amendments to them. Some of the reports seen, for example, indicate that the principal driving force behind the changes to HR policies was to cut costs. In addition, some documents record what happened in individual

cases or in the aggregate, such as workforce profile figures on the number of employees subject to disciplinary procedures.

4.2 Deteriorating attitudes towards disabled workers

4.2 (a) Negative attitudes

(i) Disabled worker information.

Attitudes to disabled workers, on the part of employers and other workers, appear to have become more negative in the last four years. According to one respondent, for instance, talk of "disabled people being lesser than able bodied people seems to have permeated into workplaces". More negative attitudes seem, in turn, to have contributed to a range of adverse outcomes for disabled workers (as returned to in the sections below), including not being recruited, missing out on training and other career development opportunities, being passed over for promotion, being refused reasonable adjustments, experiencing abuse and ill-treatment, or being targeted for redundancy or being otherwise dismissed. As regards career development opportunities, for example, one respondent reported - "In my most recent performance review, my manager just said 'we don't need to bother looking at development or career aspirations for you'". It also appeared that some of these adverse outcomes could have constituted unlawful discrimination and that unlawful discrimination could well have increased substantially in the last four years (as returned to below). There were also, however, accounts of positive attitudes on the part of employers and colleagues, such as in the case of the woman who wrote - "My previous store manager was wonderful, even took time to research my condition and come up with ways to help me. He also kept an eye on me and would always check every few hours if I was ok". Unfortunately, however, no respondents stated that attitudes had improved since 2010; and, indeed, this woman who worked in a store indicated that her new manager had a very different attitude (as touched on below at 4.2 (b)).

(ii) Document analysis information.

The document analysis presented a mixed picture of possible attitudes to disability and of the outcomes that these attitudes could have contributed to. Where disability was referred to, this was in most cases done in positive

terms, including in terms of the contribution that disabled workers made to the organisation and the need to provide adjustments to facilitate this contribution. However, comparing the pre- and post- 2010 documents, it appeared that there could have had been a significant shift from support to discipline in the case of disabled workers. In addition, outcomes for disabled workers (such as invoking grievance procedures) which might indicate negative organisational attitudes and/ or behaviours, also seemed mixed and will require disentangling. For example, in one English unitary authority, those who had declared a disability constituted 4.53% of the workforce but had submitted 14% of the grievances. This suggests the possibility (albeit no more than this) of disabled workers experiencing a disproportionate level of organisational behaviour that the worker in question considered adverse. There again, when it came to "bullying and harassment", the behaviours that might be expected to occur as a result of the more serious negative attitudes, no workers who had registered as disabled are rerecorded as having made a complaint in this organisation during the same period. There is, however, the question of the experience of those who are disabled but do not declare a disability (as returned to below).

4.2 (b) Benefit cheat narratives spilling over into the work place.

(i) Disabled worker information.

Appearing to contribute to these negative attitudes and adverse outcomes, government and other rhetoric about disabled people on benefits being cheats, scroungers and shirkers (e.g. Briant et al. 2011; McEnhill and Byrne, 2014) seemed to be spilling over into the workplace. For example, one disabled NHS worker wrote - "the drip drip negative rhetoric about disability and benefits from the coalition has been incredibly damaging and pervades all". The survey responses, and follow-up answers, indicate that negative attitudes and adverse outcomes have included disabled workers being regarded as a "burden", especially in organisations hit by the spending cuts. In addition, reasonable adjustments have been refused on the grounds that the illness or disability is faked or exaggerated, that the worker is "lazy and making excuses", or that adjustments would be resented by the other workers as "special treatment". In deed, some of those who were granted adjustments

felt that this had led to resentment. One respondent recalled - "I was frequently referred to as 'special' because I needed work-place adjustments and a particular type of chair. This made other employees angry at me". These negative attitudes appear to have occurred despite adjustments supporting performance and often being quite small. For example, the woman referred to above, who said that her "previous store manager was wonderful", continued - "I struggled when I changed store I worked in to get my new manager to understand and accept small changes I needed as a disabled employee ... This led to my body being unable to cope and subsequently I lost my job". It also appeared from some respondents' answers that they may have felt that the government used the positive image of para-Olympians and other "exceptional" disabled people to frame the types of negative images referred to above, and to underline the failure of disabled people who were dependent on benefits or needed support at work in the form of adjustments. For example, a self-employed worker argued - "Since the coalition, disabled people ... are portrayed as worthless scroungers (apart from the few para-Olympians, who are seen as shining examples of 'how to be disabled correctly'"). In deed, there does appear to be a strong focus on para-Olympians in a number of government disability related documents (e.g. HM Government, 2013). Perhaps the most distinctive feature of welfare narratives and their impact has been a reduction in compassion towards those in need, and it seems that this could also have affected how disabled workers were viewed within their organisations, with, for instance, one public sector worker referring to there being "Much less compassion for staff who are unwell or off sick".

(ii) Document analysis information.

It can not with any confidence be said to what extent, if any, welfare narratives about disabled people (referred to above) influenced the HR policies seen. However, some of the representations in the post-2010 policies, and documents from post-2010 committee meetings which discussed changes in HR policies, are at least consistent with such an influence (not withstanding that negative representations were apparent to a lesser degree in the HR policies produced earlier). Of particular note, some of the post-2010 reports,

committee minutes, and the HR policies in general, appear consistent with the government focus in welfare reform upon individuals being responsible for their own predicament and needing to be assisted and incentivised to change themselves (including through "work experience" and sanctions) (e.g. Yates and Roustone, 2013), rather than a focus upon the need for government support or organisational change (such as in employers being encouraged to make adjustments). For example, with a few exceptions, the 35 capability policies seen do not highlight the contribution that organisational context can make to poor performance. Instead, individual deficiencies are highlighted and (as with the moral blame evident in welfare rhetoric) the individual deficiencies are quite often framed as a failure of effort rather than aptitude. For example, one local authority's capability procedure states, - "Counselling for improvement is probably the most important step in the whole disciplinary process because it gives you the best chance to get the employee to conform and perform correctly". In addition, consistent with welfare cheat narratives, a prominent feature of the post-2010 reports to a number of committee meetings is an indicated concern that capability and absence policies are in effect being abused by those who are not as ill as they present themselves as being; and a related focus on stopping such abuse. Further, changes designed in part to stop abuse - such as speeding up the process towards dismissal - appear to reduce the encouragement and opportunities to make adjustments in genuine as well as any not genuine cases. Despite many of the organisations stating elsewhere (such as in their equality policies) that they "follow" the social model of disability, their written policies at least appear to be more strongly influenced by the medical model. The medical-functional/ individual model focuses on the individual's impairment as the primary cause of his/her functional limitations. In contrast, the social model, according to Barnes (2000: 441), "centres on environmental and cultural factors as the primary cause of disabled people's marginalization".

4.2 (c) Reluctance to declare a disability

(i) Disabled worker information.

Declaring a disability can facilitate adjustments to working arrangements or to the working environment. However, disabled job applicants and employees

appear to have been increasingly reluctant to declare a disability for fear that this could lead to discrimination. For example, one respondent wrote - "I always try to hide my disability from prospective employers - if it became known, I never got the job". It also appeared that some employers were pressuring disabled job applicants into declaring a disability, even when knowledge of their disability had not been needed to determine what if any adjustments were necessary for the interview process. For example, one respondent reported - "(the interviewers) asked disability related questions at interview, which when I challenged, they fudged over asking me...". As returned to below (para. 4.6), such pre-employment questions about disability could in some cases have been contrary to section 60 of the Equality Act.

(ii) Document analysis information.

Some of the documents, such as some HR actions plans, suggest that many of the organisations had perceived there to be a problem getting workers to declare a disability. In addition, a few documents indicated that the reluctance to declare had increased in recent years. Further, where the figures are provided, the percentage not indicating whether or not they have a disability appears to be considerable. For example, in the case of a South West England council, the workforce profile for 20012/13 shows: (a) 2.47% of "employees declaring a disability; (b) 65.92% "declaring no disability; (c) 29.15% "not stated"; and 2.47% "Prefer not to say". The 31.62% not declaring either way raises the possibility that the 2.47% might be a significant understatement of the percentage of workers who consider themselves disabled. It also suggests that some of the equality figures could understate the percentage of disabled workers who are subject to negative procedures or outcomes. For instance, in 2012, 6.6% of those who were issued a "formal disciplinary warning" had declared a disability, which is higher than the percentage of workers in the council who have declared a disability (2.47%). However, 60% of those who were issued with a formal disciplinary warning did not declare whether or not they had a disability. Indeed, it seems possible that those with undeclared disabilities might be more vulnerable to disciplinary warnings in that, not having declared a disability, the impact of their disability

on their performance (such as arriving late) is more likely to be treated as a disciplinary issue than a capability one.

4.2 (d) Abuse and hate crimes

(i) Disabled worker information.

As well as facing more negative attitudes in work, there appeared to be an increased incidence and fear of disability related abuse and hate crime against disabled workers outside work. For example, one respondent wrote - "As an LGBT disabled person, sometimes I really stand out when out with a date and get obvious or exaggerated stares or comments. Me and a date recently experienced a hate crime outside a nightclub where my date was harassed and accused of 'faking' his disability". As in this example, welfare narratives about disabled people (i.e. faking) seem to mix with long-standing prejudices against gay and transgender people. Disabled individuals also appeared to have experienced abuse from some of the Department for Work and Pensions' (DWP) contractors. For example, referring to her appointment with someone from a DWP contractor, one respondent wrote that the person she saw "was very provocative and insensitive. Laughing at people who had a germ phobia".

4.3 Deterioration in disability employment practice and job quality

4.3 (a) General deterioration in disability employment practice

(i) Disabled worker information.

Most respondents, who expressed an opinion on the matter, indicated that disability employment practice had got worse since 2010. The principal reported changes were more negative attitudes towards disabled workers (as discussed above at para. 4.2) and a reduced willingness to make adjustments. With regards to the latter, one respondent, for example, wrote - "I think that the treatment got worse since 2010. They were no longer interested in how best to support me...". Some seemed to feel that the poorer practice amounted to discrimination. One respondent, for example, referring to employment practice, wrote - "more discriminating, putting meetings in rooms that I had problems accessing in my wheelchair...". However, a handful of respondents indicated that they did not think that disability employment

practice had got better or worse. A prison officer, for example wrote - "I do not feel there was much change. At the time I had a fantastic governor". In addition, one respondent reported that practice had become "Slightly better with regard to practical things e.g. chairs ... but lack understanding by not asking disabled people what they need/want".

4.3 (b) Deterioration in the general quality of jobs with a disproportionate impact on disabled workers

(i) Disabled worker information.

It also appeared that there had been a substantial deterioration in the general quality of jobs. This included jobs becoming more insecure, work intensification and greater demands in relation to duties and working times, fewer opportunities for career development and less management support, and an increased reliance on monitoring and discipline. All these changes appeared to have had disproportionate adverse impacts on disabled workers. Some examples include the following:

- *Jobs becoming more insecure and problems with agency work.* It seemed that there was an increased use of zero hours and other casual contracts and that these contracts could cause particular difficulties for disabled workers. For example, a woman who worked in retail stated - "My employer said that I had a zero hours contract, though no written contract ... I had to be on call any and every day for a shift, this season ... no adjustments made despite quoting the disability act till I'm' pink in the face. Zero hours are not good for ADHD or OCD. It turns you into a complete wreck. If its not the money, its the mental health and constant worry that does". It also seemed that agencies were, in general, reluctant to hire disabled staff and to make adjustments for those who were hired. According to one respondent, for example, - "working through an agency made one feel almost alien or special but not in a good way. No willingness to accommodate the disabled staff." In addition, permanent contracts were indicated to have become more insecure, with disabled workers in some case at least being at particular risk of being dismissed. This included disabled workers being dismissed in circumstances in which it appeared that reasonable adjustments might have enabled them to stay

on and might have been made in the past. For example, a voluntary sector worker reported that she had been "moved to a location which" she "was unable to travel to due to" her disability and that she "eventually" had to resign. While some organisations appeared to be making more use of temporary contracts, which some disabled workers found particularly difficult, some appeared to be making less use of part-time contracts, which can be of particular benefit to disabled workers. One respondent, for example, noted - "we stopped part time contracts".

- *Problems with self-employment.* For some disabled workers, self-employment was an ideal solution, as it allowed them to adapt their schedule and work load to their condition. However, in most of the cases referred to, there appeared to be substantial problems with self-employment. Some felt that they had been forced into self-employment as a result of the threat of benefit sanctions, and found that their condition made it hard or impossible to do the work that they were required to do and/or found that their condition deteriorated. For example, one respondent stated - "I felt forced into self employment as I found ESA not enough to live on and threat of WCA intimidating. My contract involved working one night a week which became too much for me ... Disabled people often forced into low paid self employment due to pressure from DWP". In this, and other cases, it appeared that the respondent's status might have been more akin to casual labour then self-employment, except that the employer had avoided the normal contractual and statutory obligations which accompany employing staff by casting the worker as self-employed. In other words, the status might have been best described as "sham self employment". It did appear that some respondents would have liked to have taken legal action or simply submit a grievance, but assumed that their self-employed status ruled this out (with this assumption perhaps being wrong). There was also a general sense that self-employed workers felt that there was not enough support for them from government schemes. For example, one respondent wrote that she was "tempted to become self-employed". She continued, however, - "There is virtually no support for disabled entrepreneurs or company

directors". Even where self-employment allowed individuals to fit work round their condition, doing so sometimes meant that too little was earned for a reasonable quality of life. Of particular note, a voluntary sector worker wrote - "Almost impossible to earn enough to live on via self-employment as my condition restricts how much I can do, and any exertion has an impact in terms of fall-out afterwards, spending time recovering".

- *Work intensification.* A common theme was workers in general being expected to work harder and/or longer, with this having particular adverse impacts on disabled workers. For example, according to a teacher - "Cuts mean that my school has less money and less staff now, so there is pressure on those of us left to do more and that includes me even though I find it physically hard". In some cases, work intensification and increased work pressure appears to have contributed to perceptions of disabled workers as a burden on their colleagues. An NHS worker, for example, wrote - "cut backs meant less staff, so more pressure on everyone, and felt disabled staff seen more as burden than asset, as everyone stressed and burning out!".

- *Fewer career development opportunities and reductions in support*. Some indicated that negative attitudes towards disability, including stereotyped assumptions about what disabled workers could not do, left them excluded from career development opportunities. This included failing to take seriously their career development needs during personal development reviews and/or being excluded from training opportunities. In some cases, general costs savings in relation to training (including going from face to face to online training) appear to have disadvantaged disabled workers. According to one respondent, for example, - "recently developed online training took no account of accessibility, because doing so would have increased cost, which means that some disabled staff cannot do the training". In addition, employee support in general, and (as referred to across these findings) reasonable adjustments in particular, appear to have been reduced. As well as adjustments being refused, it seems that

getting agreement to them could involve a considerable battle and/ or leave the worker feeling humiliated. One public sector worker, for example, stated - "It has been humiliating and dehumanising, having to describe difficulties in detail, just to get a chair. Impossible to get sickness capability trigger points adjusted".

- *Increased emphasis on discipline.* While support, and also engagement with the workforce (such as through consultation), appeared to have in general been cut, the focus on monitoring and discipline seems to have increased. For example, a man working for a "billion dollar multinational" wrote - "Firm spent four years trying to force me out through various measures including disciplinary/capability procedures ... Very senior supervisor who initiated this was explicit (when no witnesses) that this was solely due to my disability, which he described as 'a threat to my schedules'". In a number of cases, it was suggested that employers went straight to disciplinary procedures without first trying reasonable adjustments. In deed, it seemed that there could have been a general switch across respondent organisations from attempting to improve performance through promoting commitment and providing support to attempting to improve performance through promoting fear of dismissal.

(ii) Document analysis information.

- *Jobs becoming more insecure.* The documents echoed the finding from disabled workers that organisations were moving towards a greater reliance on short-term and casual contracts. In a number of cases, it appeared that the increased use of temporary contract had been in anticipation of having to make redundancies (as a result of spending cuts). For example, a report to a London Borough's Scrutiny Committee states - "Management anticipate up to 40% reduction in customer services and corporate business support officers over next 5 years. In preparation for the possible reduction, all vacancies in customers services and corporate services have been filled with staff on fixed term contracts in order to minimise redundancy costs". It also appeared that those on casual and

some temporary contracts could be excluded from policies and processes that could benefit disabled workers. A particular problem is that most of the HR policies seen appear to only apply to "employees", or in some cases also to applicants for employment, and so might be taken to exclude casual and other workers who do not meet the common law definition of employee. In deed, some explicitly exclude casual workers. For example, a County Council's capability procedure states that it is "not applicable to ... casual workers". This is despite there being legal obligations to workers, who do not meet the relevant legal definitions of employees, in relation to matters covered in these HR policies, including a duty to make reasonable adjustments.

- *Problems with self-employment.* None of the documents seen addressed the issue of self-employment. For example, none of the HR policies indicated that organisations had legal duties towards self-employed workers and none of the committee minutes seen referred to the dangers of sham-self employment following redundancies and re-hiring ex-employees as individual contractors.

- *Fewer career opportunities and less support.* Among possible problems identified, personal development review policies, guidelines, and checklists tended in general to provide no encouragement to ask the employee what if any reasonable adjustments he/she needs. In addition, while HR policies in general provided considerable encouragement to make adjustments, a considerable number did not. For example, 11 of 15 absences policies looked at for these purposes referred to reasonable adjustments, 5 of 16 capability policies, and just 2 of 17 discipline policies. The limited encouragement that disciplinary policies give to making reasonable adjustments could be of particular significance in that (as referred to above) there appears to have been an increasing emphasis upon dealing with personnel issues as disciplinary matters.

4.4 The impact of the public sector spending cuts.

(i) Disabled worker information.

Public sector spending cuts appeared to have had a number of negative impacts on disability employment practice in the public sector. These included the following:

- *Reluctance to request adjustments.* Some respondents indicated that they felt reluctant to request adjustments when resources and teams were stretched. For example, an NHS workes stated, referring to the cuts, - "one would have to have a rhino's skin not to feel guilty for asking for anything in that environment - I am a member of a hard pressed team. This meant I could not be as effective as I might have been, as I did not want to be marked out as 'different' or more deserving by e.g. having my own printer rather than sharing". As in this case, not getting adjustments could have an adverse impact on performance, which, in turn, could jeopardise the disabled worker's job situation. While some decided to not request adjustments, the negative attitudes discussed above - such as disabled people being regarded as a "burden" - appear to have contributed to some of these decisions.

- *Reduced willingness to grant adjustments.* The cuts also led to a reduced willingness to grant adjustments which were requested. A public sector worker, for example, reported - "I believe that my employer is becoming less willing to make any adjustments, let alone those that cost money. I'm being made to feel like a criminal because I take time off ... I guess they can make life miserable so I leave and can be replaced by an able bodied person". Those needing expensive adjustments may have been at particular risk. For example, one respondent wrote - "People with life threatening illnesses are comparatively expensive to support in employment." In some cases, adjustments only seem to have been made after a fight. For example, apparently referring to the impact of the cuts on adjustments, a local authority worker wrote - "Yep, my ex employer was very difficult about reasonable adjustments, tried to make me move to a building with stairs and no lift. Took my trade union and the equalities officer to sort them out".

- *Knock-on effects on charities*. Public sector cuts also had a negative affect on adjustments in charities which were dependent upon public sector grants and contracts. Of particular note, one charity worker stated - "Like all charities, the budget of the charity I work for has become increasingly tight. This means that they are having to find ways to save money. One of the ways they are doing this is by making fewer adjustments for disabled staff". In addition, a worker from another charity argued - "Funding cuts leading to fewer staff and excessive workloads within my sector. If, due to disability, unable to cope, or seen as unable to cope with these changes, employer sees you as even more of a liability than before".

- *Redundancy and other dismissals*. It seemed that tighter budgets could have made employers less willing to make the adjustments that would have enabled some disabled workers to continue in employment. For example, referring to the cuts, one public sector worker wrote - "Occupational health nurses used to recommend adjustments to capability procedures to take account of disabilities; the latest nurse told me 4 weeks ago that they don't do that". It also seemed that cuts could lead to disabled workers being regarded as less valuable to the organisation. For example, according to an NHS worker - "times of cuts, people and organisations focus on what they are measured against, and cuts mean disabled seen as 'added on' issue rather than core". In addition, it seemed that some employers might have used department wide redundancy situations as an opportunity to dismiss disabled workers whose disabilities were perceived to have become a problem, and to do so with less likelihood of successful tribunal action than would have been the case if they were dismissed under normal circumstances i.e. if the dismissal for other reasons had not in effect been hidden amongst the redundancies. For example, one public sector worker stated - "Was disciplined while off sick for an issue relating to my disability, was refused flexible working, refused training or promotion then eventually made redundant. Had I not been disabled none of this would have happened". It also seemed that redundancy, or a job being

outsourced, often led to disabled workers going from a working environment which was in general positive towards disability to one in which there was little or no support.

- *Cutting Remploy*. Without Remploy, a number of respondents were struggling to find suitable or any work. One respondent, for example, stated - "without the regular employer (Remploy) work is almost impossible to find at a reasonable wage now ...". Another wrote, referring to the closure of Remploy factories, - "This made my friends who worked in Remploy unemployed. One of them has found a menial job that pays minimum wage and has had to sell his car as a result of the cut in income despite his health problems making the car essential" One respondent, however, expressed doubts about Remploy's purpose, stating - "I think Remploy and other so called supported employment scheme is just another scam for companies to get access to cheap labour and vastly increase their profits over disabled people quality of life."

(ii) Document analysis information.

- *Reductions in terms and conditions.* Not surprisingly, the need to make substantial cuts was a major theme across corporate plans and other organisational documents; and staff and other "efficiencies" were indicated to be a principal means of achieving these cuts. It appeared (from the documents seen) that an important underlying assumption in many public authorities could have been that staff efficiencies were expected to in large part be achieved through cuts to terms and conditions, and increased monitoring and discipline, rather than using support and positive management approaches to facilitate and elicit improved performance. As regards terms and conditions, a report to corporate committee, entitled "mitigating the impact of budget cuts on the workforce", included among recommended actions "changes to contracts of employment, concentrated on making changes to local conditions of service that are non-contractual ... cuts to sick leave". As regards increased discipline, this included, for

example, "tightening up" capability procedures so as to be able to get rid of poor performers more quickly.

- *Reduced willingness to make adjustments or provide support*. As referred to above, moving away from support and towards discipline and control, tended to entail some general reduction in willingness to make adjustments. It also appeared that the equality action plans of some councils became less ambitious in succeeding versions, and there was some sense that measures aimed at disabled workers in general, such as through supporting disabled workers groups, were being cut back or reviewed. However, in general, there remained an apparently quite strong emphasis on staff adjustments.

4.5 More unlawful discrimination against disabled workers and harder to do anything about it

4.5 (a) Long standing legal protections have proved valuable

(i) Disabled worker information.

There were indications that long standing legal protections had contributed to good disability employment practice, as well as helping to ensure that disabled workers were able to remain as valuable team members. This was particularly evident in the case of reasonable adjustments. While at least some adjustments might have been made without the existence of the duty, it appeared that the duty's existence quite often contributed to decisions to make them. A teacher wrote, for example, - "It was difficult to get adjustments put in place and then I had to fight to stop them being taken away as the needs of my employer changed. I had to remind them of the law so that they took account of my needs so that I could keep working". It also appeared that other duties had made a positive difference to disability employment practice. For instance, one respondent seemed to imply that the Public Sector Equality Duty (PSED) had encouraged disability equality training for line managers, and another that the PSED had contributed to the setting up of a council supported disabled workers group and had encouraged the involvement of disabled workers in the production of HR policies. One respondent, however, appeared to have a more negative perspective of the PSED, stating - "the

PSED is an excuse to get the tea and sandwich out and patronising and wasting disabled people time and while PSED scheme people boast about their self importance ... and probably get them to fill in doctored survey....". The respondent proposed instead - "send disabled people including myself onto workshop on how to ... drag the Equality Act breakers all the way to civil small claims court... even if its just for couple hundred pound compensation for hurt feelings and remedies". Even where poor disability employment practice was reported, workers were able in some cases to obtain redress at the employment tribunals, with, for instance, a voluntary sector worker writing - "I eventually resigned and claimed the redundancy and disability discrimination payment I was due via employment tribunal".

4.5 (b) Legal duties could have been regularly breached and breaches could have been increasing

(i) Disabled worker information.

- *Possible increase in unlawful discrimination.* Whether there had, in a particular case, been an act of unlawful discrimination would ultimately, of course, be a question for a tribunal to address (if the matter reached one). All six respondents who referred to taking a case to tribunal, and to there having been a decision, stated that their case had been successful. One respondent, for example, stated - "I invoked the grievance procedure all the way to tribunal; at final appeal stage - unseen false 'issues with my performance' appeared out of the blue. My tribunal was successful". In other cases, which did not go to tribunal, it is difficult to assess from the limited information available (and that which is available all being from one party to a matter) whether or not there is likely to have been unlawful discrimination. However, the information provided seems consistent with (though far from providing reliable evidence of) there having been, in the organisations in question, widespread and frequent breaches of anti-discrimination draws; and with there having been a general increase in such breaches during the last four years. It appeared that there may have been discrimination in recruitment, failures to make reasonable adjustments (including outside recruitment), and acts which would have

constituted "combined discrimination" (under the not brought into effect provisions of the Equality Act).

- *Failures to make reasonable adjustments.* If some respondents were correct in their assertion that adjustments had never been made for them and/or in their department, despite these having been needed, then there would appear to be a question mark over compliance. For example, one respondent, who used a wheelchair, stated that "no adjustments were made". Elsewhere, she indicated that an adjustment that would have benefited her would have been to have meetings in rooms which were wheelchair accessible, with the implication being that this would have been possible. In addition, some of the adjustments that respondents referred to having requested appear to have been both inexpensive and important to the individual's job; and, therefore, it is hard to imagine that they would not have been considered "reasonable" in law. This might have been the case, for instance, with the local authority worker who wrote - "still waiting for voice activated software for my PC that IT wiped off when they upgraded it".

- *Discrimination in recruitment.* A substantial number of respondents seemed to have felt that being disabled was the reason for them not being recruited. In some cases, they may have encountered direct discrimination in the sense that the very fact of them being disabled could have been the principal reason for being rejected, with little or no reference to their particular disability and how it might effect their ability to do a particular job. This might, for instance, have happened in the case of the IT manager who reported - "As soon as an employment agency establish I have a disability its game over ..". The respondent does not say what the disability was. However, unless it was very severe, it appears unlikely that he will not have been able to do any of the jobs that the agencies he applied to had or would get on their books. Also suggesting possible direct discrimination, a public sector respondent reported - "In a job I'd been very successfully doing for nearly 20 years, when my boss thought I had terminal cancer she immediately stopped speaking to me, and

deprioritised me for a planned promotion". There was also a more general feeling among respondents that referring to a disability in an application form or an interview resulted in not being offered an interview or a post; and that information about disability was used for discriminatory purposes. For example, one respondent wrote (on behalf of her son) - "was unable to get a job for three years despite very active searching and I feel sure this is related to my learning disability. I also am concerned that there is no way to legislate for online applications discriminating against those declaring a disability". In such cases, the applicant might be given little choice but to state whether or not he/she is disabled. Similarly, another respondent gives the impression that he was pressured into answering questions about his disability at interview, without it being clear, from his statement, that these questions were relevant to the post that he had applied for. In some of these cases, it appears that organisations could have been in breach of EqA section 60 ('Enquiries about disability and health'), which, with exceptions, prohibits asking a job applicant about their health or disability before offering them work. Further, bearing in mind that the possible breaches concerned applications forms provided to all applicants, it seems possible that either section 60 is being widely breached or that (if the matters reported were subject to an exception under the section), section 60 is not fit for its intended purpose. The exceptions, to the general prohibition, include where asking a question about health or disability is necessary to establish whether an applicant 'will be able to carry out a function that is intrinsic to the work concerned' (Section 60(6)(b)). It does not seem that this exception could be taken to apply to the standardised applications forms that organisations provide, since it can not be taken to apply to all posts that, for example, a supermarket chain advertises. Further, simply asking someone in an application form to indicate whether they have a disability will not provide the information necessary to determine whether or not the applicant will be able to carry out the relevant functions. The more credible exemptions lie in EqA sections 60(6)(c) and 60(6)(d), which respectively allow questions that are necessary for the purposes of - 'monitoring diversity in the range of persons applying for work' or for taking positive action. As regards

monitoring, however, it would not be necessary to collect 'diversity' information in such a way that those selecting for interview are able to tell which applicants have indicated on the form whether that they are disabled (as might be the case with the online applications referred to). As regards the positive action exemption, this could not reasonably be taken to apply if the information is in fact used to select out disabled applicants. The problem is that proving this would be difficult, and, more generally, the exceptions to section 60 are so vague and so broad as to leave plenty of room for the potential discriminator to establish a convincing defence.

- *Combined discrimination.* There were a number of cases of what could have constituted combined discrimination (the meaning of which is set out above at 3.2 (b)) if the Coalition had brought the combined discrimination provisions in the Equality Act into effect. Five of these cases concerned respondents feeling that their discrimination or less favourable treatment was the result of, or might have been the result of, being disabled women or being a disabled woman and a lesbian. One wrote, with reference to Access to Work, that she thought that "disabled women are being seen as less able to run a business and as such losing their award on the grounds of business viability". Another wrote - "People didn't take my disability seriously as its not common in women. Had to put up with gender related comments and more searching questions to work out if I was lying", while a third disabled woman also appeared to suggest that being a woman contributed to her disability or its effect being questioned. She wrote - "As my condition is invisible ... then I feel people assume I'm just not making an effort, or I'm wispy-washy female...". In the fourth case, the respondent indicated that age, gender, and disability had together contributed to less favourable treatment. She stated - "Disabled mature women in wheelchairs - I feel as if I was seen as the 'token' disabled employee except when it came to my rights under the DDA (Disability Discrimination Act)". In the fifth case, the respondent wrote that she was "triply disabled ..., a lesbian and 58", though she seemed to suggest that age and disability could have been the principal cause of discrimination in the case of job interviews. Another respondent suggested that being a disabled

transgender person contributed to ill-treatment, writing - "My gender (transgender) may have also been a factor in the way I was treated by my manager ...". Another respondent felt that being a "Jehovah's witness was a big problem" for his "line manager". With the limited information available, it is impossible to take even a reasonable guess at whether some of these matters would have entailed combined discrimination. However, it seems possible. To take a hypothetical example, if the less favourable treatment that the transgender respondent complained of was, say, being refused permission to go on external training courses, and the manager would have let the respondent go if the respondent had either been a disabled man or a non-disabled transgender person, then there may well have been what would have been unlawful combined discrimination (unless there was justification in law). In contrast, there would not have been direct discrimination under the current direct discrimination provisions (as neither gender nor disability were, in this imagined scenario, effective causes on their own).

- *Cuts to legal protections.* It appeared that some of the cuts to legal protections (discussed above at 3.2 (b)) could be having adverse impacts on disabled workers. There were indications, for example, that weakening the Public Sector Equality Duty (PSED) (through watered down specific duties) could be beginning to reduce the pressure on public sector organisations to encourage good disability equality practice. One respondent, for example, stated - "The PSED has been weakened dramatically. Consultation has decreased greatly, DET (disability equality training) is now all but non-existent and recruitment of disabled people is now even lower than it was before 2010". Another respondent however wrote - "No change as far as I know." In addition, there were indications that some organisations could be taking health and safety issues less seriously, with for example, one organisation being said to be conducting fewer health and safety assessments. This could have impactions for adjustments in so far as the research literature indicates that assessments can quite often lead to what in effect are adjustments, such as to work stations (Harwood, 2014: 1517).

- *Legal protections no longer carrying the same weight.* There were indications that government and media attacks on legal protections, including as "red tape" (see above at para. 3.2 (a)) could have been taken as a green light to discriminate by some employers. For instance, one respondent wrote - "I invoked the grievance procedure when one of my colleagues reported me for taking too long to go to the toilet, they backed off but tried other avenues. DDA (Disability Discrimination Act) afforded some protection, but they became less leery of it after 2010."

4.5 (c) Reasons for not making adjustments

(i) Disabled worker information.

As the research literature indicates the importance of adjustments for disabled workers (e.g. Newton et al, 2007; Wilson-Kovacs et al, 2008: 711; Roulstone and Williams, 2013: 10-11), it seems worthwhile to attempt to better understand why they are sometimes not made. Set out below are what appeared from the respondents answers to have been some of the relevant factors and processes:

- *Organisational failure to understand or accurately represent the legal requirements.* From the respondents' accounts, employers appeared in some respects at least to have underestimated what the duty required or to have understated what it required when providing a justification for not making adjustments. An understanding which appeared to have been instrumental in a number of cases was that it was lawful to dismiss someone if reasonable adjustments could not completely alleviate the effect of the disability on the worker's ability to do his/her job. Most clearly illustrating this apparent misunderstanding/ misrepresentation, one respondent wrote - "final conclusion was that yes they were doing it because of disability, but that they were legally allowed to as reasonable adjustments could not completely alleviate effects of disability (iow they admitted they were discriminating over disability, but claimed a loophole in law meant they were doing it legally)". However, dismissing someone in the indicated circumstances could, for instance, constitute unlawful

'discrimination arising from disability' (EqA section 15). Dismissal would constitute unfavourable treatment 'because of something arising in consequence of' the worker's 'disability' (section 15(1)(a)). Whether it constituted unlawful discrimination would depend upon whether the employer could 'show that the treatment is a proportionate means of achieving a legitimate end' (section 15(1)(b)) i.e. whether it can in law be justified. If the effect of the disability on his work was, after adjustments had gone some way to alleviating it, quite minor, then dismissing the worker may not have been justified. In another case, it seems possible that the employer did not even realise that reasonable adjustment might need to be made before deciding to dismiss someone because a disability was affecting their work. Specifically, according to the respondent, - "As entire focus of campaign to dismiss me was focussed on my disability I invoked the grievance procedure, and took it through every level of appeal up to the board of a £Bn company, succeeding in proving I was not 'lazy' or 'incompetent' as alleged, only for them to turn around and say 'but you are disabled, it does affect your work, and we can legally discriminate in this circumstance'". In these, and other cases, it also appeared that the respondent's themselves may not have realised that the employer's interpretation of the law was incorrect; and, as returned to below, most found it hard or impossible to access the kind of legal advice that should have made this clear.

- *Budget pressures and Access to Work.* As referred to above (para. 4.4), public sector spending cuts appeared to have discouraged adjustments in the public sector, with the cuts also having knock on effects on adjustments in voluntary sector organisations dependent upon public sector contracts. However, recession linked financial pressures also appeared to have reduced willingness to make adjustments in the private sector. It also appeared that, while Access to Work had played a major role in supporting good practice in relation to adjustments, recent changes may have reduced its usefulness in some circumstances. A local authority worker, for instance, stated - "Access to work was a waste of time - they assessed my need for a lift, agreed it, then didn't fund it as the government

decided to stop funding building adaptations". Another respondent reported - "It is increasingly difficult to get Access to Work to agree to fund the support I need. Each renewal, I have a bigger battle with them ... ". In addition, it appeared that Disability Living Allowance (DLA) had enabled individuals to work and that there had been problems with DLA; and major concerns about the future under its replacement Personal Independence Payments. One respondent, for instance, wrote - "if my DLA is removed I will be unable to continue employment. I require the use of my motability car to travel as I live in a very rural area with a limited bus service that is not wheelchair friendly". The more deep rooted problem, however, seemed to be that many who might have been entitled to DLA/ PIP, and would have benefited from it, could have been scared off applying as a result of the rhetoric about benefit cheats referred to above (para. 4.2 (b)). For instance, referring to DLA, a self-employed worker wrote - "I've not even applied, as I've watched on Twitter the hell others are going through with assessments, the complete lack of support, the lack of knowledge of staff doing assessments, the inflexibility of having to turn up to a fixed appointment at a fixed time (v difficult for me with my condition at the moment), and the implications in the media that all disabled people are lazy scroungers".

(ii) Document analysis information.

As with the survey findings, it appeared that organisations tended to underestimate and/or understate what the reasonable adjustments duty requires. This was suggested, for example, in the approach taken to reasonable adjustments in HR policies. These policies might reflect organisational understandings, in that they will usually have been written by the organisation's HR officers; and might in turn influence organisational understandings, in that line managers and others will use the policies for guidance. HR policies appeared to underestimate what was required in two principle ways. First, some policies covered areas which adjustments were relevant to - such as performance reviews - without indicating that adjustments might need to be made. Second, where policies referred to adjustments, the impression was given that less was required than was in fact

the case. As regards relevant policies not referring to adjustments, this appeared to apply more to discipline policies than capability ones and more to capability ones than to absence policies (as shown in Table 1 below). As regards policies understating what the duty required, this took a number of principal forms. Of particular note, a majority of the policies which refer to reasonable adjustments indicate a duty to consider reasonable adjustments but do not indicate that there is also a duty to make them (as shown in the case of absence policies in Table 2 below). While a limited number of pre-2010 documents were seen (and not all of these were from organisations from which post-2010 documents had been obtained), there did appear to be have been a small but significant reduction in encouragement for reasonable adjustments in the HR policies. With high levels of redundancies in the public sector since 2010, what might be of particular concern is the limited encouragement to make reasonable adjustments in local authority redundancy and redeployment policies. In a survey of policies from a random sample of 86 UK local authorities, it was found, for example, that only 2.4% had redundancy policies indicating a particular need to make and/or consider adjustments for employees with disabilities in relation to redundancy consultation.

Table 1: Policies that refer to "reasonable adjustments"

Policy type	**Number of policies of each type**	**Number which refer to "reasonable adjustments"**
Absence	16	11
Capability	17	5
Discipline	17	3

Table 2: Absence policies that indicate a duty to make or consider reasonable adjustments

Total number of policies	31
Indicates requirement to make adjustments for employees with disabilities	8

Indicates requirement to consider adjustments for employees with disabilities.	17

4.5 (d) Harder to enforce legal rights.

The indications were that many of the respondents who felt that they had been discriminated against would have wanted to take legal action if doing so was not so difficult and/or if the prospect of winning did not appear so slim. There was also the impression that individuals felt that enforcing their rights was becoming more difficult or had become impossible.

Using the grievance procedure. There is now considerable legal pressure to go through grievance procedures before taking legal action. However, none of the respondents who referred to having invoked the grievance procedure appear to have regarded the outcome as a great success. The employee of a multinational company did indicate that he took the procedure through all the appeal stages and succeeded in "proving" that he was not "'lazy' or 'incompetent' as alleged". However, he still appears to have been dismissed. In another case, use of the grievance procedure appears to have been unsuccessful but the individual went onto succeed at tribunal. In general, there appeared to be considerable cynicism towards grievance procedures, as in the case of the public sector worker who wrote - "I accepted redundancy and didn't bother putting in for grievance as they would never have listened to me anyway". For some, it seemed ill health ruled out taking effective action. This seemed to apply, for instance, to a retail store worker who wrote - "I was too ill and struggling with my disability to manage to challenge my dismissal or raise with head office my rights under the equalities act. I was struggling to even basically function by this point so I could not challenge these issues". In addition, the respondent who went through all the appeal stages, referred to above, suggested that long grievance procedures could result in legal claims timing out.

Legal action. Some had taken a case to tribunal and won, with, for instance, someone who worked for a disability charity reporting - "The first time after my

contract was terminated, I took it to a tribunal and was successful". In addition, it appeared that in some cases the threat of legal action could have brought about a desired result. A local authority worker, for instance, wrote - "I threatened my ex employer with grievance/ tribunal for direct discrimination. It was the only way to be treated fairly during my redundancy period". For most, however, taking legal action did not appear to have been regarded as a realistic option. Problems included lack of access to legal advice, support, or representation. It did appear that unions sometimes played an important role in providing advise and helping to enforce rights. A teacher, for example, recalled - "I had to get my union to fight for reasonable adjustments on my behalf". For some, their health problems, which in a number of cases was said to have got worse as result of the discrimination complained of or the battle with their employer which followed, ruled out beginning a lengthy legal action. For instance, referring to the option of taking legal action, one respondent wrote - "I just left, too worn out to even consider that". In other cases, deteriorating health militated against successfully completing a legal action. According to a public sector work, for example, - "I took the claim to tribunal as a litigant in person. The local authority changed their barristers twice so I assume they had advised them to settle - which they did not do. By the time I got to tribunal I was ill from dealing with their appalling dirty tricks throughout the case, and was unable to sustain a good case - but I did establish that it was the pension issue that had been the root cause of their discrimination against me, which was gratifying". However, the problem which appeared to be standing in the way of legal action in most cases was the newly introduced tribunal fee. For example, referring to legal action, one respondent stated - "I haven't taken any, and know I could never afford it now huge fees are involved". That employees are unlikely for a variety of reasons to take legal action seems likely to reduce the deterrent effect of legal provisions. This is what a respondent appeared to have in mind when, with reference to legal action, she commented - "too much hassle to do and many employers now know this"

5. RECOMMENDATIONS

1. *Unfair dismissal.* As a result of the Coalition doubling the normal qualification period for protection from unfair dismissal, an employer is now permitted in law (with specified exceptions such as dismissal for membership of a trade union) to unfairly dismiss a worker during the first two years of their employment. Since so many are on temporary contracts, this means that substantial numbers may have little protection from unfair dismissal during large parts of their working lives. As a first step in addressing the extreme imbalance of power in the employment relationship, the qualification period for normal protection from unfair dismissal should be returned to the six months that it was in 1974. There seems to be no good reason why workers today should have so much less protection than their parents and grand parents had. In addition, a consultation should be launched into how to increase day-one protections for workers (including in relation to unfair dismissal).
2. *Third party liability.* Reintroduce employer liability for failure to take reasonably practicable steps to prevent third parties (such as customers or clients) repeatedly harassing an employee.
3. *TUPE and health and safety law.* Repeal the Coalition introduced provisions in statute and regulation which have weakened health and safety law and the Transfer of Undertakings (Protection of Employment) (TUPE) Regulations.
4. *The Public Sector Equality Duty.* The equality duties have had a considerable impact in reducing institutional discrimination s (eg Pearson et al, 2011: 249); and in promoting employment, and access to services and facilities, for disadvantaged groups. Public services are for all and should be accessible to all. However, as discussed earlier (3.2(b)), the Coalition's regulations have watered down the equality duty specific duties towards irrelevance. Therefore, the predecessor Disability Discrimination Act specific duties, which were the strongest of the duties, should be reintroduced and (with necessary changes) should be extended to all the equality strands.
5. *A private sector equality duty.* There appears to be no good reason why private sector organisations, and charities, should not also be

subject to requirements (of the type in the Public Sector Equality Duty) to takes steps to reduce the extent to which they discriminate against employees, customers and clients. All that the general duty requires is "due regard" and this will tend to mean that smaller companies will not need to do as much as giant multinationals. However, as initial step, it is recommended that the duty be extended to all corporations with a £200 million or greater annual turnover worldwide.

6. *Micro-business exemption*. There also appears to be no good reason why someone should be subject, without redress, to discrimination, abuse or ill treatment, just because they work for a small employer. Existing laws (without the Coalition introduced exemptions) take account of size and resources, including through the principles of reasonableness and proportionality. Therefore, all exemptions for "micro businesses" (i.e. with 50 or less staff) should be removed.
7. *Combined discrimination.* Intersectional discrimination, such as being discriminated against on the grounds of being a "black woman", can be addressed under US law (as established in Jefferies v HCCAA 615 F. 2nd 1025 (5th Cir. 1980) (Solanke, 2011: 341342). The Coalition, however, has ruled out this option in the UK through not bringing into effect the EqA provision on combined discrimination. Our study indicates that combined discrimination is a problem. It is, therefore, recommended that this protection now be brought into effect.
8. *Socio-economic duty.* Introduce the EqA Public Sector Socio-economic Duty (which addresses inequalities). As Burnham notes (2010: 169), section 1 of this duty was "intended to oblige relevant public authorities to consider how their strategic decisions might help reduce inequalities associated with socio-economic disadvantage." Burnham adds (2010: 169) - "The kinds of inequalities in question are said to include inequalities in education, health, housing(,) crime rates, and income". Inequality has continued upwards since the late 1970s and is now regarded by many as extreme. In addition to hurting those at the sharp end of inequality, inequality appears to be bad for the economy as a whole (Stiglitz, 2012). This duty might go some way to addressing inequality.

9. *Public procurement.* Use the regulation making power (section 155(2)) in the EqA to introduce a specific equality duty directed at promoting equality through public procurement.
10. *Best Value guidance.* Revise the Best Value Statutory Guidance so that it no longer discourages good practice (labelled as "gold plating") in the use of procurement to promote equality.
11. *Employee shareholder status.* Amend the Employee Shareholder Status so that employees do not lose any statutory rights as a result of signing-up to it.
12. *Agricultural Wages Board.* Reintroduce the Agricultural Wages Board as an interim measure and introduce a minimum wage across all economic sectors which is also a living wage; and introduce a minimum income for all.
13. *Trade union reform.* The employment relationship is highly unequal. A multinational, for example, will suffer no hardship from losing a regular employee but that employee could suffer a life time of hardship from losing his/her job. Therefore, the threat of resignation has nothing like the same power as the threat of being dismissed; and, from this imbalance, employers are in general able to ensure that terms and conditions, including wages, are heavily weighted in their favour. A principal purpose of statutory protections, and trade unions and trade unions rights, is to go some small way to redressing this imbalance; and to, in effect, try and ensure that the interests of the employee cannot be trampled with impunity. Trade unions freedoms, however, have been rolled back from the time of Margaret Thatcher's government onwards (Smith and Morton, 2006: 402); and Labour accepted the bulk of Conservative legislation on industrial action (Smith and Morton, 2006: 404, citing Charlwood, 2004: 385-386). Trade unions freedoms have been further restricted under the Coalition government, including with the Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act 2014 (Abbott and Williams, 2014), and as noted above (para. 3.3 (a)), Conservative Party plans would make it more difficult still for trade unions to exercise counter-balancing power through the threat of strike action. As noted

above (3.3. (a)), - "This is despite UK anti-unions laws ... already putting the UK at odds with 'international human rights law under the norms of the European Charter and the International Labour Organisation' (Bogg and Ewing, 2014: 221). It is, therefore, proposed that, in addition to the improvements in legal protections set out in these recommendations, there be a major consultation on how to empower trade unions to bring back some balance into the employment relationship.

14. *The definition of disability*. The requirement that someone meet the narrow definition of disabled to gain protection under most of the disability provisions in the Equality Act has caused considerable problems. The definition can, for example, discriminate against those with mental health problems (Bell, forthcoming: 13). A particular problem is that there is no duty to make reasonable adjustments - however severe the disadvantage suffered - unless someone meets the definition of disabled. The nature of, and need for, a definition should be given full consideration, including through extensive consultation with disabled people, and changes need to be made. For example, there may be an argument for an individual to come within the scope of the reasonable adjustments duty when the disadvantage is more than 'substantial' (as defined in the current Act) and he/she has a significant impairment (whether or not long term), but he/she does not meet the current EqA definition of disabled.
15. *Anticipatory reasonable adjustments duty in the employment field*. There should be a new anticipatory employment reasonable adjustments duty towards disabled people at large (akin to the current anticipatory duty in the services field), to stand alongside the existing individual duty in the employment field. This would facilitate the employment, retention, and career progression, of disabled workers.
16. *Reasonable adjustments assessment*. Drawing upon the EAT's decision in *Mid Staffordshire General Hospitals NHS Trust v Cambridge* [2003] IRLR 566 (which has been contradicted in subsequent appellate decisions), the reasonable adjustments duty should be amended to include an explicit requirement to conduct a

reasonable (in the circumstances of the particular case) assessment of what is required to eliminate a disabled person's disadvantage. Depending upon the circumstances, this assessment might need amount to little more than seeking basic information (where the employer is not already in possession of such information), and conducting a brief mental assessment, so as to determine that there is no substantial disadvantage that an adjustment could help eliminate. However, if, for example, a worker has complex and substantial needs, and an initial assessment of the type just referred should have indicated this, then there may be a duty to conduct a more thorough assessment.

17. *Questionnaire procedure.* Reintroduce the discrimination questionnaire procedure and extend it beyond the equalities field, including, for example, to breaches of health and safety law, and victimisation outside the equalities field.
18. *Tribunal fees.* It cannot be acceptable that only those with deep pockets can enforce their legal rights; as this discriminates against the poorest and most vulnerable workers, who will also tend to be subject to the most unlawful treatment.
19. *Legal aid.* Introduce legal aid for advice and representation at the employment tribunals.
20. *Equality and Human Rights Commission and Health and Safety Executive.* Increase the funding for these enforcements agencies, increase their enforcement powers, and repeal the economic growth duty on them.
21. *Tribunal procedures.* Repeal the changes to tribunal procedures which have weighed the procedures further against the claimant.
22. *Tribunal powers to make wider recommendations.* Reintroduce the tribunals' power to make wider recommendations to employers its finds to have discriminated, such as being able to recommend equality training for managers. There should also be a power, in case of persistent discrimination, to order changes.

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APPENDIX A: DISABLED WORKERS SURVEY FOR DPAC

Part 1: Recruitment, progression, treatment, dismissal etc

1. Employer treatment.

Do you think that your employer's or ex-employer's treatment of disabled employees got better or worse since May 2010? In what ways do you think it changed?

Please write any answer here (and use as much space as you wish):

2. Recruitment, progression, treatment, dismissal etc.

How, if at all, do you think that being disabled affected whether or not you were recruited, promoted, provided with training, ill-treated or well treated,

subject to a disciplinary or capability procedure, made redundant or otherwise dismissed?
Please write any answer here (and use as much space as you wish):

3. Grievance, resignation, or retirement.
How, if at all, did being disabled, and your employer's behaviour, influence whether you invoked the grievance procedure, resigned, or took early retirement?
Please write any answer here (and use as much space as you wish):

4. Reasonable adjustments.
What was your experience of trying to get your employer or manager to agree to reasonable adjustments to take account of your disability, such as, for example, adjustments to your working environment or your working arrangements?
Please write any answer here (and use as much space as you wish):

Part 2: Temporary contracts, "flexible" working, DLA/PIP, and Remploy
5. Temporary and casual contracts, part-time, or self-employment.
How, if at all, did being disabled affect your experience of zero hours, casual or other temporary contracts; shift working; being part-time; or being self-employed? How willing was your employer to make reasonable adjustments for temporary, part-time, or self-employed workers?
Please write any answer here (and use as much space as you wish):

6. Requirements to be more "flexible".
How, if at all, were you affected by employer requirements to take on a wider range of duties, work more variable and uncertain hours, or change between locations (including having to move offices, switch between offices, to "hot desk", or work from home)? How, if at all, did your employer support you in meeting these requirements?
Please write any answer here (and use as much space as you wish):

7. Disability Living Allowance, Personal Independence Payments, and Access to Work.

How, if at all, have changes to Disability Living Allowance/ Personal Independence Payments, or Access to Work, affected you in relation to work?

Please write any answer here (and use as much space as you wish):

8. Remploy and supported employment.

How, if at all, have you been affected by the closure of Remploy factories or cuts to supported employment?

Please write any answer here (and use as much space as you wish):

Part 3: Working in the public sector

9. Public sector spending cuts.

If you work or worked in the public sector, did the spending cuts affect you as a disabled worker or affect your employer's disability employment practice more generally? For example, did the cuts affect your employer's willingness to make reasonable adjustments?

Please write any answer here (and use as much space as you wish):

10. Outsourcing and privatisation.

If your role has been outsourced to the private sector, or your employing organisation privatised, how did this affect you? For example, was disability employment practice better or worse in the employer that you were transferred to? Were you transferred?

Please write any answer here (and use as much space as you wish):

11. The Public Sector Equality Duty (PSED).

The PSED places a duty on public sector organisations to have due regard to the need to promote equality in relation to disability and other protected characteristics. How, if at all, has the weakening of the PSED affected your employer's disability employment practice? For example, has there been an impact on willingness to consult disabled workers, to provide line managers with disability equality training, to set equality objectives, or to recruit and retain disabled workers?

Please write any answer here (and use as much space as you wish):

Part 4: Discrimination and legal action

12. Combined discrimination.

How, if at all, do you think that you have been discriminated against on combined grounds, such as for being a disabled woman or a gay disabled person. Possible grounds which might have been combined with being disabled include, for example, age, ethnicity, gender, gender reassignment, pregnancy or maternity, religion or belief, or sexual orientation.

Please write any answer here (and use as much space as you wish):

13. Legal action.

What has been your experience of taking, or not being able to take, legal action against an employer, such as for unfair dismissal or discrimination?

Part 5: Benefits, sanctions, training, and work experience

14. Benefits, ESA, JSA, etc.

What has been your experience of Employment and Support Allowance and/or Job Seekers Allowance, "work experience", "the claimant contract" or "sanctions"? For example, did your disability contribute to a sanction and did sanctions have an impact on your health or disability?

Please write any answer here (and use as much space as you wish):

15. DWP and its contractors.

Did the DWP, ATOS, or training and "employability" providers, offer or make adjustments to take account of your disability? Did you ask for adjustments; and, if so, were these granted or refused?

For example, were adjustments made to what you were required to do under the claimant contract? Were adjustments made to the working or training arrangements, or to the working environment, to help you to successfully take part in training or work experience?

Please write any answer here (and use as much space as you wish):

16. Employers you were sent to.

How did you get treated by employers that the DWP or its contractors sent you to for work experience or for a job interview? Did the employer offer or make or refuse adjustments? For example, were adjustments made to the interview process for a job; or to the working environment or working arrangements in the case of work experience?
Please write any answer here (and use as much space as you wish):

Part 6: Any other information you would like to provide

17. Any other information that you would like to provide about your experiences.

Please provide any other information or ideas that you think would be relevant to this research.
Please write any answer here (and use as much space as you wish):

18. Would it be OK to ask some follow-up questions?

If you are willing for us to email you for more details about the experiences you have recounted in this survey, please let us know here and provide a contact email address. The information provided will be anonymised to hide your identity and you do not need to provide your real name.
Please write any answer here:

19. Telephone interviews?

If you think that you might be willing to be interviewed over the phone, please let us know here and provide a contact email address. The information from the interview will be anonymised to hide your identity and you do not need to provide your real name.
Please write any answer here:

20. DPAC members.

If you are willing for extracts from your survey answers to be included (without your name) in a media release from your local DPAC group, please provide the name of your local DPAC group here. NB not all local DPAC groups will be doing media releases.
Please write any answer here:

21. Providing the following information can help us better understand people's experiences of work.

But please skip any questions that you would prefer not to answer. And you don't need to answer any of the questions.

Gender:

Age group (please tick appropriate group):

16-25

26-35

36-45

46-55

56-65

65+

22. Would you like a summary of the findings?

Please put a contact email address if you would like to be sent a summary of the findings.

Where to email this survey form.

When you have answered all the questions that you want to answer, please email this Word doc to: publicinterestresearchunit@outlook.com.

Thank you very much for your help.