

# From compliance to culture change

## Disabled staff working in lifelong learning

Commission for Disabled Staff in Lifelong Learning

Chaired by Leisha Fullick

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Literature Survey

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# Summary

- S.1 This survey complements and provides background for our report *From compliance to culture change: disabled staff working in lifelong learning*, launched in March 2005. It is in five main sections. The Overview examines the study of disability and a current definition, moving on to put the work of the Commission for Disabled Staff in Lifelong Learning into a historical context. It deals with models of disability and looks at disability within general recent changes in equality and diversity. The section on 'Disability, work and legislation' explores the position of disabled people in the workplace, with some analysis of directly relevant legislation. Following on from this is a section on 'Disability and disabled staff in educational employment'. There are one or two overlaps in key areas with the main report, particularly with Section 2 of that report – 'The context of the Commission's work'.
- S.2 The Commission identified specific issues that we published in our interim report in September 2007. Background information about these issues is mostly interwoven into the survey, but four – 'Disclosure', 'Access to Work' (with a separate additional report at [www.niace.org.uk/commissionfordisabledstaff/access-to-work](http://www.niace.org.uk/commissionfordisabledstaff/access-to-work)), 'Employment equity' and 'Mental health' - are included in the section on 'Specific issues'. The final section, the 'Conclusion', presents our view of the current state of disability equality in the lifelong learning sector based on literature surveyed.

# Section 1

## Overview

### Disability study

- 1.1 The field of disability study is often contested. The terrain is difficult and the agenda is fast-moving. The vocabulary is not fixed, and even some key words have different meanings in different contexts. Our report and this literature survey are based on the social model of disability. So, generally, we believe that disabled people have impairments but that it is not their impairments that disable them. It is society that does the disabling, and the barriers that society erects.
- 1.2 We use the term 'non-disabled people' rather than 'able-bodied people' for people who do not have impairments. The use of the term 'able-bodied' can have pejorative implications for people who do have impairments. It can be argued that the term 'able-bodied' reinforces the notion of incompleteness or 'spoiled identity' (Goffman, 1968, Riddell, 2005) in disabled people. We use the term 'disabled people' and 'disabled staff' as currently appropriate terms. We use the phrases 'apparent' and 'non-apparent impairments' rather than the terms 'visible' and 'hidden'. The meanings of other 'specialised' words within the field of disability studies will be clear from the context in which they are used in this survey. Where we quote from other sources, we sometimes add our own preferred phrases in square brackets.
- 1.3 There are other complexities. Some people with congenital, acquired or worsening hearing impairment or deafness may not regard themselves as disabled. Others in the same position will have the opposite view. But those who are profoundly deaf and immersed in the culture of British Sign Language make up membership of a 'Deaf culture that is located in a distinctive, shared language... Many Deaf people explicitly refer to themselves as a linguistic and cultural minority, making the analogy with minority ethnic groups, who are similarly likely to be excluded because they lack fluency in the dominant language' (Barnes and Mercer, 2003, p 103). Such Deaf people resist being identified as disabled or with impairments, just as they resist medical 'solutions' to deafness such as cochlear implants and genetic screening for deafness.

## Definition of 'disability'

- 1.4 Definitions of disability can also be problematic. We examine them further in paragraphs 1.13–1.17 below, as part of a discussion of the social model of disability, but in our work we have chosen a broad and inclusive definition.<sup>1</sup> The one on which disability legislation is currently based describes disability as 'a physical or mental impairment that has a substantial and long-term impact on a person's ability to carry out normal day-to-day activities'. 'It includes people with cancer, diabetes, HIV and Multiple Sclerosis [from the point of diagnosis], people with a hearing or sight impairment or a mobility difficulty. It also includes people with hidden disabilities [non-apparent impairments] such as epilepsy and dyslexia, and people who have mental health conditions or learning difficulties' (Montgomery, 2007, p 3).
- 1.5 The central problem with the definition is the focus on the perceived deficit within individuals rather than the disabling attitudes of society (discussed in more detail below). The difference between impairment and illness, disease and sickness can also be unhelpfully blurred. Disabled people can be as healthy as non-disabled people. As far as mental health difficulties are concerned, when do certain episodic or short-term difficulties 'join up' to become disabling on a longer term basis, and to what extent do people with certain types of mental health difficulty recognise themselves as disabled, if at all? Very varying public attitudes to different aspects of disability add to the complexity of the 'disability landscape'.

## Historical context of the Commission's work

- 1.6 Our work has been taking place seven and a half years into the twenty-first century. Up to the middle of the twentieth century, there was no large body of literature that focused on disability, and it was rarely the area of specific historical study. Where there has been study, it has lacked the depth and sophistication to analyse what is a complex

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<sup>1</sup> 'The Commission is using a broad definition of 'disability' to include physical, sensory and cognitive impairments, mental health difficulties, long term health conditions, learning difficulties and neurodiversity, and learning differences or difficulties such as dyslexia or dyspraxia' (*Commission for Disabled Staff Interim Report, 2007 p 3*)

picture. It is right to be wary of generalisation. What follows is a brief survey of the main developments in the 'historical development' of disability that have informed our work.

- 1.7 Oliver (in Swain, French and Cameron, 2003, p 24) 'draws attention to the emergence of disability as a result of processes of industrialisation in the nineteenth century'. In pre-industrial society, people with impairments had been able to contribute to the economic development of the societies in which they lived – indeed, where activity was at a subsistence level, this would have been essential. Some writers such as Gleeson (in Barnes and Mercer, 2003, p 24) agree that 'whilst impairment was probably a prosaic feature of feudal England, disablement was not'. In the new discipline of factories, developing in the late eighteenth and nineteenth centuries, speed, accuracy, attention to detail and time-keeping meant that there was no place for those who could not conform to the required standards. Industrial capitalism was said to have marginalised disabled people, and, applying Gramsci's notion of hegemony (for an overview, see Entwistle, 1979), one strand was the hegemony of non-disabled people.

## **The 'medical' (deficit) model of disability and its effects**

- 1.8 This hegemony is said to have manifested itself in increasing separation of disabled people and the 'medicalisation' of disability. The 'medical model' locates disability 'as an individual problem tied to the functional limitations of the bodies of people with impairments' (Swain *et al.*, 2003, p 22). It is sometimes referred to as the 'deficit model'. In western society for much of the twentieth century, disability has been equated with 'flawed' minds and bodies. According to Barnes and Mercer (2003, p 1), it spans people who are 'crippled', 'confined' to wheelchairs, 'victims' of conditions such as cerebral palsy, or 'suffering' from deafness, blindness, 'mental illness' or 'mental handicap'. Within this 'medical model' interpretation, disability amounts to 'personal tragedy' for individuals and a social problem for the rest of society, albeit that disabled people, often poor and disadvantaged, were regarded as the 'deserving' rather than 'undeserving' poor.
- 1.9 If disability was considered to be a 'personal tragedy', with 'less than whole' disabled people generally in a state of dependence and

specifically dependent on 'treatment options', separate education provision became typical. Charitable, medical and psychological interventions became standard. Trends in the late twentieth century, with the medicalisation of disability, have been towards the development of a huge market for products to support disabled people – drugs, hearing aids, cochlear implants, electric wheelchairs, stair-lifts, pace-makers etc., which have sometimes accentuated feelings of helplessness, dependence and 'otherness' as much as provided opportunities.

- 1.10 Strongly related to the deficit model and 'medicalisation' of disability, and the hegemony of non-disabled groups, is an unfavourable 'social construction' of disability. The 'disabled role' can be considered 'authorised dependency' with 'professional guidance' (adapted from Barnes and Mercer, 2003, p 3). As part of this, disabled people might be encouraged and 'taught' to act out their social roles of disability – blind people being helpless and deaf people 'stupid' or absent-minded. Barnes and Mercer (*ibid.*, p 5) refer to the application of bereavement models to impairment, acquired or otherwise, in 'deterministic phases' – all from the 'psychological imagination' of the dominant group of non-disabled people.
- 1.11 Part of the social construction of disability is about 'stigma'. For those who have impairments that are not immediately apparent – perhaps mental health difficulties, hearing impairment, sight impairment, cancer etc., 'passing' refers to hiding the 'stigma' and 'covering' to minimising its significance to avoid embarrassment and social sanctions. There are further aspects of 'stigma' and how it shapes the relations between disabled and non-disabled people. Swain *et al.* (2003, p 23) refer to physical impairment which threatens normality and 'discipline', and stereotypes of disabled people identified by other commentators portraying them (to paraphrase) as pathetic victims, plucky, tragic but brave heroes or evil, twisted villains with chips on their shoulders.
- 1.12 An historical and ideological survey of disability indicates that negative attitudes towards it constitute a form of social oppression and discrimination akin to but distinct from sexism and racism. 'Disablism' can encompass oppressive and exclusive actions as well as economic oppression of disabled people who are often poorer, more vulnerable, less well-educated and with much less equality of opportunity than their non-disabled counterparts. Young (in Barnes and Mercer, 2003, p 21) identifies four aspects of oppression for disabled people: exploitation,

marginalisation, powerlessness and cultural imperialism. Exploitation of disabled people who are often a long way from the labour market could be argued to manifest itself in how they are cared for and the market generated by them. 'Marginalisation' refers to the removal (either externally or self-imposed) of disabled people from workplaces, leisure pursuits and indeed the mainstream of everyday life, which overlaps

*with 'powerlessness' as the realisation of oppression, which confirms that [disabled] people have little control over or choice in what to do with their lives. It is verified by a sharp divide between those who exercise authority or power... and those who simply 'take orders' and lack authority or status*

(Barnes and Mercer, 2003, p 21).

*Cultural imperialism refers to '[A]ble bodied normalcy'... embedded in everyday thinking and behaviour as privileged or desirable state of being. The notion of 'able-bodied' assumes normative or universal standards by which all other 'bodies' are judged*

(*ibid.*, pp 21–2)

In this interpretation, disabled people are 'other' and 'deviant'.

## **The social model of disability**

- 1.13 However, from the 1960s, challenges developed against the prevailing deficit/medical model of disability, notably in the articulation of a social model. Disabled people, and society in general, owe a large debt to those involved in the disability rights movement who pressed for radical change in attitudes to disability. From the 1960s, to paraphrase Barnes and Mercer (2003, p 1), disabled people reacted against their status as second-class citizens, the physical and other discriminatory barriers they faced, and against negative cultural stereotypes – all of which, it was argued, add up to 'disablement'.
- 1.14 Shifting the emphasis from the individual to society was an important development. Bowe (in Barnes and Mercer, 2003, p 10), 'lists six major barriers to the social inclusion of disabled people... the architectural, attitudinal, educational, occupational, legal and personal (or everyday problems ranging from few material resources to the stigma of having

an impairment).’ The ‘social (or social barriers) model of disability’ was developed by the Union of the Physically Impaired Against Segregation (UPIAS). As a key development in the progress of disabled people, it is worth reproducing in full.

*Impairment: Lacking part or all of a limb, or having a defective limb, organ or mechanism of the body.*

*Disability: The disadvantage or restriction of activity caused by a contemporary social organisation which takes no or little account of people who have physical impairments and thus excludes them from participation in the mainstream of social activities*

(UPIAS, 1976, in Swain *et al.*, 2003, p 23 and Barnes and Mercer, 2003, p11)

1.15 Swain *et al.* (2003, p 23) report that: -

*Impairment is, as in the medical model, identified as a physical characteristic, but disability is reconstructed as a social and political process. Rather than being perceived as a problem arising from the limitations of people with impairments, disability is recognised as being created by societies that are organised to suit the requirements of non-disabled people and which ignore the requirements of disabled people. Disability ceases to be something that a person has, and becomes instead something that is done to the person.*

1.16 Later on, and importantly, the UPIAS definition was extended by the Disabled People’s International to include intellectual and sensory impairments, and mental distress, which covers mental health difficulties (in Swain *et al.*, 2003, p 24). To paraphrase Thomas (in Swain *et al.*, 2003, p 24), as disability is a form of social oppression involving the social imposition of activity on people with impairments, their psycho-emotional well-being is undermined, so this element is also relevant to the social model.

1.17 Swain *et al.* (2003, p 24) offer a useful overview of the social model of disability, paraphrased and summarised here. It provides a critique disabled people can use to demonstrate their social exclusion. It helps them to argue for the same chances in life as non-disabled people in terms of education and housing etc. It provides an alternative understanding of what disability is like and how it is experienced. It

shows how they have been patronised and the barriers they face. It has been fundamental in the push for inclusion. As Barnes and Mercer (2003, p 12) note:

*The line of causation is redirected. In the individual model, 'disability' is attributed to individual pathology, whereas the social model interprets it as the outcome of social barriers and power relations, rather than an inescapable biological destiny.*

In the social model, blindness is an impairment, but lack of audio description when a film is shown is disability. Deafness is an impairment, whereas not being able to participate in a discussion because there are no signers or electronic note-takers is disability – and so on. Our report endorses the power of the social model to help achieve transformative change for disabled people.

## **The social model and legislation**

1.18 There is no doubt that legislation in the United Kingdom has been influenced by the social model encompassed in the strengthening voice of the disability movement, disabled people and their representatives. The Disability Discrimination Act (1995) and subsequent additions and amendments have required institutions and organisations (including in the lifelong learning sector) to make 'reasonable adjustments' to include disabled people, even if 'reasonable' can be a contentious and limiting term. The duty to anticipate and plan for impairments through the Special Educational Needs and Development Act (2001) (SENDA) in the education sector has been a useful further step for learners (rather than employees). Legislation to compel public bodies to respond to the Disability Equality Duty (required from December 2006) through Disability Equality Schemes and disability impact assessments – embedding responsiveness to disability throughout the policies, activities and processes of organisations – may be ensuring further progress, though it is perhaps too early to say. Certainly, some organisations, including the trade unions, believe strongly in the transformative power of the duty. The Learning and Skills Council (LSC) has been particularly active in response to legislative requirements, producing a comprehensive Single Equality Scheme in April 2007 which incorporates its response to the Disability Equality Duty. Ofsted has produced a draft Disability Equality Scheme (2007). Legislation and policy are considered again in more detail in paragraphs 2.11–3.1 below.

## The importance of the social model of disability

- 1.19 The current recent primacy of the social model in policy and legislative terms is welcome. It has been argued that a focus on socially constructed disability rather than impairment in individuals and the consequent 'neglect' of impairment risks undermining the very real struggles and difficult experiences of disabled people. The difficulty with this is that if there is a re-focus on individual impairment (back, in a sense, to a medical approach to disability), then it poses an unwelcome 'danger' to the effectiveness of the social model in forcing society to change.

## Other theoretical developments

- 1.20 As we have stated, the Commission's approach is based on a belief in the transforming power of the social model, but we recognise that for some people the 'either/or polarity' between individual and social models is conceptually inadequate, and we present the arguments here. Danieli and Wheeler (2005, p 491) suggest from the evidence they present that Ben Purse, a visually impaired piano tuner living in the nineteenth and twentieth centuries 'understood that visually impaired people were disadvantaged both by their impairment and by social and environmental factors – what might be referred to today as a *socio-medical model* of disability'. Berthoud (2006, p 1) presents his paper 'based on assumptions which combine elements of the individual model of disability and the social model.'
- 1.21 Some commentators argue for an eclectic approach. Gould (2004, p 12) writes of

*a need for a model that takes into account the daily struggle faced by people with impairments rather than dismissing these as wholly socially constructed, that seeks to identify a continuum of impairment rather than drive a wedge between non-disabled people and disabled people and that grapples with the issues of psychological and social identity. The social model cannot really help with, for example, the individual experience of distress and pain. Big social theories are often at a loss where the individual is concerned...*

This 'chimes with' the World Health Organisation's revised *International Classification of Functioning and Disability* (1999) or the International

Classification of Impairments, disabilities and Handicaps (ICDH-2) which 'sought to incorporate the 'medical' and 'social' models into a new 'bio-psychosocial' approach' (*ibid.*, p 15).

- 1.22 Montgomery (2007, p 5) relays criticisms of both medical and social models that disabled people are passive victims either of their conditions or social situations. For her, the bio-psychosocial (bps) model 'accepts that both impairments and the environment can contribute to disability and puts an individual's impairment in to a context which is both personal to the sufferer (*sic*)... and takes into account... social environment' (*ibid.*, p 5). Perhaps aspects of developing theory have some merit in recognising that some impairments are particularly challenging and painful. But if responsibility for change remains firmly with society rather than with individuals, as in the social model, then that is how transformative change will be achieved.

## Disability and general changes in equality and diversity

- 1.23 In terms of recent policy and politics, disabled people are inevitably affected by general changes in the field of equality and diversity. Celebration and affirmation of difference are coming to the forefront and exemplified in the strapline of the former Equal Opportunities Commission – 'Women, Men, Equal, Different' – and its 'Vision for Equality': -

*Equality is no longer just about the rights of minorities, important though they are. It must concern everyone and touch every part of life. Equality is not about making different people with different needs fit the same mould. It's about recognising that everyone has rights and responsibilities: the right to respect and dignity, an equal chance to fulfil their potential and the responsibility to make a contribution to society.*

- 1.24 For some commentators, there are dangers that this could constitute a backward step for disabled people, with the focus on diversity threatening to dilute transformative responses to their particular needs. We are all different, but some people's differences require more in response for them to be fully included. As Russell put it (in Barnes and Mercer, 2003, p 131) 'To move beyond ramps, we must first agree that ramps are indisputably necessary'. The celebration of diversity without any sense of where it should lead to in terms of social or economic

justice could even be a disguise for a reiterated, transmuted hegemony that perpetuates the *status quo*.

1.25 This section of the literature survey has explained the complex background to the work of the Commission in terms of disability theory and development, topics which are often contested and swiftly changing. It has given a brief historical overview, and surveyed different models of disability. It has examined the recent influence of the social model in policy and legislative terms. On one interpretation, disability legislation acknowledges the changes society needs to make to include disabled people – in a sense social *re*-construction. Another interpretation might paradoxically be that ‘reasonable adjustments’ and ‘anticipatory measures’ to include disabled people are based on the continued acceptance of the individual model of disability and ‘functional limitations’. The survey has emphasised the importance of the social model. A re-focus on individual impairment might ironically undermine the effectiveness of the social model to get society to change and be inclusive. It has explained interest in eclectic or bio-psycho-social (bps) approaches to advance the interests of disabled people, though the Commission itself is firmly committed to the social model. Finally, the survey highlights the possible danger of mere celebration and affirmation of diversity, which could dilute the agenda for change for disabled people as a particular (if heterogeneous) group, and indeed other minority groups, and which could have little to do with social justice and redistribution.

## Section 2

# Disability, work and legislation

## Disability, disabled people and work

- 2.1 The situation for disabled people in terms of employment, access to work and unemployment is generally less favourable than for non-disabled people. Adapting Smith and Twomey's (2002) key points in labour market trends: -
- In 2001, 3.7 million men and 3.4 million women, nearly one in five people of working in age in private households, had a current long-term impairment
  - 10 per cent of adults from 16 to 19 reported an impairment in 2001, but this proportion increased to one-third for adults in the 50 to retirement age category
  - 3.4 million disabled people were in employment in 2001 – an employment rate of 48 per cent, compared with an 81 per cent rate for non-disabled adults
  - Unemployment rates for disabled people were 8.3 per cent, compared to 4.8 per cent for non-disabled people
  - Approximately half of disabled people in the UK are economically inactive, compared with only 15 per cent of non-disabled people
- 2.2 Twelve per cent of disabled people were managers and senior officials, the group which comprises 14 per cent of the overall working population, whereas 15 per cent of disabled people were in 'elementary' occupations, the group which comprises 12 per cent of the overall working population.
- 2.3 Figures from the Shaw Trust (<http://www.shaw-trust.org.uk/page/6/>) confirm these trends. Additionally, Shaw Trust figures show that 26 per cent of disabled people do not hold any qualifications, compared to 10 per cent of non-disabled people, and people with mental health difficulties or learning difficulties are less likely to be in employment than people with other impairments. The employment rate for people with learning disabilities is 26 per cent and for people with mental health difficulties 21 per cent.

- 2.4 However, it is misleading to put all disabled people indiscriminately into one homogeneous group, as we have been indicating above. Riddell (2005, p 192) argues in effect that whilst a 'binary line' between disabled and non-disabled people may be useful politically and legally, it does not necessarily exist in practice. Disabilities are both apparent and non-apparent. They can be congenital as well as acquired. They can fluctuate and are experienced in different ways. In some cases they can be removed or their effects ameliorated. People can resist disabled identities. Even whether something 'qualifies' as impairment can vary from period to period. Berthoud (2006), in the context of disabled people and employment, echoes these points. Clearly not all impairment is the same and opportunities for people with different impairments vary considerably. Discrimination also varies according to impairment. He produces evidence that impairment is higher in older people because of the accumulation (and intensification) of long-term conditions and increased risk of onset. He argues that impairment can be a consequence as well as a cause of economic disadvantage. Writing of impairment characteristics, he shows that certain conditions such as mental health difficulties are more associated with poor employment prospects than others. Certain types of impairment (such as locomotor and intellectual) are more disadvantaging than others (such as hearing and 'disfigurement'), and the more severe the impairment, the poorer the job prospects.
- 2.5 Other research (Phillipson and Smith, 2005, p 2) shows that a combination of age and impairment has profound consequences: the likelihood of someone who leaves work through ill-health or impairment after the age of 50 re-entering the labour market 'is slim and declines rapidly as length of unemployment increases'. Shaw Trust figures are even starker. After two years on Incapacity Benefit, a person is more likely to die or retire than find a new job.

## **Disabled people, employment policy and legislation**

- 2.6 In the early twenty-first century, as the paragraphs above show, disabled people are still disadvantaged in the workplace, even though there are differences in situation and opportunities between different disabled groups in terms of type and severity of impairment and interlinking social, geographical, economic and demographic factors (see Berthoud, 2006). A brief survey of employment policy in relation to

disabled people provides the context for this continuing disadvantage. Thornton and Lunt (1995) present the development of policy for employing disabled people in terms of a contrast between social obligation (however imperfectly realised) and individual responsibility. In the first half of the twentieth century, social obligation in theory was the dominant emphasis, finding form in reports and legislation to introduce quotas for the employment of certain groups of people. After the First World War, employers were intended to take on 5 per cent of returning war veterans. After the Second World War, the quota was 3 per cent of disabled people in firms of 20 or more employees. There were elaborate but generally widely ignored measures to try to achieve compliance. Quotas were regarded as an unwarranted intervention of the free operation of the labour market.

- 2.7 Other social obligation policies included giving preference to disabled people, especially in 'reserved' occupations, but the jobs designated tended to be of low status. More significantly, some 'employment equity' schemes began to address the concerns of proponents of the social model of disability by focussing attention on features of work and barriers disabled people face in the workplace. As Thornton and Lunt remark (1995, pp 15–16):

*Anti-discrimination legislation may protect an individual disabled person, and ensure that his or her particular requirements are met, but it cannot directly influence the construction of work itself or the organisation of the workplace. It is important, therefore, to consider employment equity measures which oblige employers to take steps to improve the representation of disabled people in the workplace by eliminating barriers to their employment.*

- 2.8 One such measure of significance, Access to Work, which began in 1994, is considered separately in more detail in paragraphs 4.9–4.13 below and at the link [www.niace.org.uk/commissionfordisabledstaff/access-to-work](http://www.niace.org.uk/commissionfordisabledstaff/access-to-work) as it is something that emerged specifically from the Commission's findings. Thornton and Lunt (1995, p 16) cite countries like Sweden for strong policy commitments to changing the working environment to minimise the disabling effects of work and the workplace. They note that in the USA and Canada, employment equity law applies to firms that are bidding for federal contracts. Contract compliance through employment equity could be a powerful change agent in the current

climate of government contracting for consultancy, delivery programmes and other services in the UK.

## The Disability Discrimination Act (DDA) (1995)

2.9 By the 1990s, according to Thornton and Lunt (1994, p 5), there was something of a policy vacuum. Employers who evaded their quota obligation were not pursued but there was no alternative right to employment for disabled workers. Three policy options to tackle discrimination in employment were a strengthened quota system, a voluntary approach to include persuasion and education and a statutory right for disabled people not to be discriminated against. Thornton and Lunt saw the development of the Disability Discrimination Act (DDA) (1995) as eroding the obligation of employers to employ disabled people. Instead, with the register of disabled people abolished, along with the quota and designated employment, there were individually-based anti-discrimination measures, policies of education and persuasion to adopt good employment practice and measures to make disabled individuals more competitive in the employment market. Meager, Hill and Wilson (2007, p 10) provide a succinct summary of the DDA (1995):

*[As a key legal framework, it] outlaws discrimination against disabled people in employment, the provision of goods and services and other areas of life. The DDA does not provide an entitlement to disabled people to specific aids and support, but it does place an obligation on employers and service providers to make 'reasonable adjustments' to ensure that disabled people are not at a disadvantage in employment or in access to goods and services.*

2.10 In other words, there is an individual emphasis to the legislation. Individuals had won the right not to be unfairly discriminated against and could pursue a grievance individually. Organisations had little obligation to make their whole working environments less discriminatory, and adjustments for disabled individuals were considered unlikely to have wider influence on work and the workplace. Thornton and Lunt (1995, p 19) argued that issues would be 'privatised' between individual and organisation, that work and workplaces would still contribute to social constructions of disability, and that anti-discrimination legislation might by itself have limited impact on structural disadvantage.

2.11 The DDA (1995), it has also been argued, was partly the result of the government not wishing to hamper the labour market unduly, and partly the result of the drive by the Disability Rights Movement for a civil-rights-style approach to achieve equity for disabled people. Linked with the legislation was a code of practice and 'education and persuasion' policies to help achieve change. Thornton and Lunt, surveying such policies even before the DDA (1995) was passed (1995, chapter 4 *passim*), report that financial inducements to increase the employment of disabled people were never truly an option (note: the Access to Work scheme is not an inducement to employers but a support for disabled employees). They might imply that disabled people have less to offer than others, and contradict the notion that they have the same rights to jobs as everyone else. Giving awards to employers with 'enlightened' practices towards disabled people suggest that their 'magnanimity' is being praised.

## **'Two Ticks' and 'Mindful Employer'**

2.12 Other ways of encouraging good practice in employers include the 'Two Ticks' symbol, which they can adopt to show five commitments: willingness to guarantee job interviews to disabled applicants who meet the minimum criteria for a vacancy; ensuring there is consultation with disabled employees about their development; helping employees who become disabled to stay in employment; developing disability awareness (*sic*) in other employees [we would prefer 'disability equality' without any qualification]; and annual review and improvement. More recently, the 'Mindful Employer' symbol shows a positive attitude to people with mental health difficulties. There has been more emphasis on the idea that employing disabled people makes 'good business sense', especially if contract compliance conditions include reference to disabled employment policy and practice as a significant 'lever' for the award of contracts. However, there has been criticism of these schemes in that they are little policed or regulated, and organisations that acquire the 'badges', often, ironically by a tick box approach, can quickly forget their promises.

## **Criticisms of DDA (1995)**

2.13 There have been criticisms of the DDA (1995). The statistics in paragraph 2.1 above show that there is much progress still to be made in order truly to include disabled people. Bell and Heitmueller (2005) have shown that

the DDA (1995) has had no impact on the employment rate of disabled people or may have worsened it – because of uncertainty about litigation costs, low levels of awareness about the act and lack of financial support. Russell (2002), from a neo-Marxist perspective, has suggested that the DDA (1995) has had a similar effect to the Americans with Disabilities Act (ADA) in the US. According to her, ADA has not increased disabled people's employment and has exposed the contradictions of promoting equal opportunities in a class-based society and free market ideology. The notion of 'reasonable accommodation' for disabled people in the US has been subjugated to the allegedly superior needs of business. Grover and Piggott (2005, p 713) echo Russell's view, arguing that in the UK non-employed disabled people are effectively part of a 'reserve army of labour'.

- 2.14 Other commentators have argued that although the notion of 'reasonable adjustments' in the DDA (1995) is an individualised approach, there are 'social model' elements. Any adjustment for disabled people, although locating the 'deficit' or problem in those people, does at least require some degree of physical and therefore social reconstruction. Setting up the Disability Rights Commission (now subsumed into the Equality and Human Rights Commission, along with the Race and Gender Equality Commissions) arguably achieved considerable advances for disabled people. Its advocacy, monitoring, campaigning and research activities took the agenda forward.

## **Disability Discrimination Act (2005)**

- 2.15 The Disability Discrimination Act (2005) marked the move away from an individualised approach to disability to a 'social model' one. It places a duty on named public bodies actively to promote disability equality, to encourage participation by disabled persons in public life and crucially to take steps to account of disabled persons' disabilities, *even where that involves treating disabled persons more favourably than other persons*. The Act goes beyond the 1995 Act and 'reasonable adjustments' because it builds in equality at the beginning of the process in an *anticipatory* way rather than making reasonable adjustments as it were at the request of individual disabled people. According to the Inclusion website ([http://www.inclusion.me.uk/Disability\\_Discrimination\\_Act.html](http://www.inclusion.me.uk/Disability_Discrimination_Act.html)) it brings about a shift from a legal framework which relies on individual disabled people complaining about discrimination to one in which the public

sector becomes a proactive agent of change. The duty requires public bodies to produce Disability Equality Schemes and action plans and to report annually on outcomes and improvements in relation to the plans. As part of the duty, disability impact assessments are crucial in bringing about improvements in policies and practice.

- 2.16 Trade unions have been swift to see the importance of the new legislation and the importance of involving disabled people. Unison (2006, pp 6–7) describe the new duties as ‘a quantum leap in legislation with an emphasis away from minimum compliance towards building positive culture change’ ... requiring ‘colleges [and other public bodies] to eliminate institutional discrimination and to develop a proactive approach to making a positive change to the lives of disabled people... by promoting disability equality in all of their practices, policies and procedures’. Unison also outlines how impact assessments should operate as a means of implementing Disability Equality Duties and how they should apply across all the work of institutions (*ibid.*, p 19). UCU (2007, Introduction) notes that ‘The positive duties are a powerful, collective tool for UCU branches and LAs’.

## Section 3

# Disability and disabled staff in educational employment

## Education sector definitions

3.1 There has been some research on impairment and disabled staff in educational employment, but possibly less in the further education system than in the schools sector and higher education. For the purposes of this survey, the schools sector is distinguished from the lifelong learning sector.

The lifelong learning sector consists of the further education system (Further Education and Sixth Form colleges, Local Education Authority and voluntary sector adult and community learning, and work-based learning) and higher education, with some museums, libraries and archives (MLA) clearly within these categories and some independent.

## The school system

3.2 One key piece of DfES commissioned research on primary and secondary school teachers' career progression in England by Powney *et al.* (2003) examined the impact not just of impairment but age, ethnicity, gender and sexual orientation. This survey concentrates on the findings of that report to do with impairment. Note that in presenting this research, we use the language of the researchers, with our preferred phrases in square brackets. The General Teaching Council for England (in Powney *et al.*, 2003, p viii) estimated that the number of teachers with disabilities [disabled teachers] was 0.05 per cent in 2002, compared to the NUT figure (*ibid.*, p viii) of 1 per cent. Given that one in five of the general working population is said to be disabled, and given issues about disclosure, both these figures could well be underestimates.

3.3 Extrapolating from the findings, all of which are relevant to the work of the Commission, Powney *et al.* (2003, pp vii–xii, *passim*) found that 'Many white male teachers thought that teachers are promoted according to their experience and ability. In contrast, female teachers, teachers with disabilities [disabled teachers] and teachers from minority ethnic groups are more likely to think that age, disability [impairment], ethnicity or gender has affected their career progression' (*ibid.*, p vii).

They report that 'most respondents with disabilities [disabled respondents] reported experiencing difficulties both in entering and making progress in the profession' (*ibid.*, p vii). 'A higher proportion of teachers with disabilities [disabled teachers] than teachers without disabilities [non-disabled teachers] in the survey work part-time' (*ibid.*, p ix). Teachers with disabilities [disabled teachers] 'were more likely than other groups to think about leaving the profession' (72 per cent of teachers with disabilities [disabled teachers] compared to 54 per cent of other teachers had considered leaving the profession) (*ibid.*, p ix). Together with other minority groups, 'teachers with disabilities [disabled teachers] were most likely to indicate that they would struggle with increased responsibility' through promotion (*ibid.*, p ix).

- 3.4 Interestingly, a number of respondents referred to being in the right place at the right time as a factor in determining opportunities – disadvantaging those lacking access to influential networks. This is linked both to the concept of 'micro-politics and power relations' considered below (paragraph 3.18) and the notions of work practices and employment inequity that disadvantage disabled staff (see below paragraphs 4.14–4.22). At the time of the report, disabled staff reported that their special needs were often ignored by INSET providers and there were few headteachers with disabilities [disabled headteachers]. Powney *et al.* believe that their research shows that individuals who fall into more than one group (e.g. being a mature entrant to teaching, from a minority ethnic group, and having disabilities [impairments]) and do not have full time permanent school posts 'may suffer double or multiple disadvantages' (*ibid.*, p xi). They report that 'forty three per cent (43 per cent) of teachers surveyed believe that a disability [an impairment] would negatively influence a teacher's promotion prospects... Many teachers would like to see more flexible working practices that support diverse career patterns' (*ibid.*, p xi).
- 3.5 The research (*ibid.*, pp xi–xii) contains a number of suggestions to overcome disadvantage that exist for some groups, including disabled staff. Summarising and abridging it, there should be compliance with legislative changes, especially to do with equal opportunities, and staff and governors should be aware of the changes. Equal opportunities should be 'mainstreamed' by developing policies that are aware of the different equality strands and recognise the benefits of diversity. Good practice should be shared and emulated. There should be effective monitoring of plans, policies (in effect, equality impact assessments). Attention should be paid to practical conditions for improvement –

explicit criteria for recruitment and progression; removing the implied discrimination of a 'flexible career'; equal opportunities for CPD; and positive action to encourage under-represented groups to seek promotion. Adaptations to workplaces and more support workers within the classroom for teachers with disabilities [disabled teachers] were mentioned elsewhere in the research. There is no mention of statistical monitoring, target-setting or new approaches to established working practices.

## The further education system

- 3.6 In the further education system, research and activity has concentrated over the last few years on black staff, with the Commission for Black Staff in Further Education reporting in 2002 and subsequent development emerging from many of its recommendations. This Commission has noted that by comparison the position of disabled staff in the lifelong learning sector has been neglected.
- 3.7 However, the DfES did commission research by OPM on improving the diversity profile of the workforce (including staff with disabilities) (Cummins *et al.*, 2006). The sector includes not just further education colleges and sixth forms but work-based learning (WBL) and adult and community learning (ACL) providers. Cummins *et al.* (*ibid.*, p 3) note the size, diversity and high degree of independence in the sector, and report that strategists believe that it is national initiatives that will achieve cultural change rather than 'organic', 'bottom-up' change. As with other researchers and commentators, they remark that current equality and diversity emphasis is on learners and equity for them rather than staff.
- 3.8 Their research reveals a range of barriers inhibiting the achievement of a higher diversity profile. The apparent lack of ambition in the sector to achieve such a higher profile is manifested in a lack of a strategic approach to workforce diversity. The sector does not prioritise the issue, either on 'social justice' or 'business case' grounds, and there is evidence that it is seen mainly as an HR issue. The research found little evidence in 2006 of sectoral leadership in equality and diversity from such bodies as the DfES, the LSC, Ofsted, Lifelong Learning UK, Centre for Excellence in Leadership (CEL) and the unions, but see paragraph 3.14 below.

- 3.9 Cummins *et al.* highlight that lack of action stems from 'fear' of doing the wrong thing, and that lack of knowledge inhibits the adoption of good practice. Data are strong in some parts of the sector but sparse in others, and they are not necessarily 'interrogated' in order to inform action and change.
- 3.10 Cummins *et al.* echo the findings of other research (see above 'The school system' and below – 'Higher education') when they highlight weaknesses in recruitment and other HR practices that militate against changing the workforce's profiles, citing the use of networks from which some groups are excluded (*ibid.* p 12). They note (without presenting evidence) a history of antipathy between employers and unions and the low profile of Equalities Bodies such as the Commission for Racial Equality (CRE) or the Disability Rights Commission (DRC), both now subsumed with the Equal Opportunities Commission into the Equality and Human Rights Commission (EHRC).
- 3.11 'Drivers' to highlight forces for increasing workforce diversity in the sector are identified. Strong and purposeful leadership from those responsible for governance and senior staff is considered crucial. External communities can exert pressure on further education sector organisations. The 'winning hearts and minds' argument is important – understanding why diversity is important - though doubt elsewhere has been cast on the 'business case' for diversity (Montgomery, 2007, pp 26–27). Additional drivers the researchers identify are compliance with legislation (which is said to be 'toughening up'), demographic projections (particularly those of working age declaring a disability), access to good practice and 'how to' knowledge, development (CPD) activities and targets (for example to address under-representation). Interestingly, the researchers identify that 'levers' such as inspectorates emphasising equality and diversity from a workforce as well as a learner perspective are important, noting that providers can get good inspection grades without automatically achieving legislative compliance in particular areas. They seem ambivalent about using equality and diversity criteria as a way of qualifying for funding.
- 3.12 What works in improving the diversity profile of the further education sector workforce is various types of activity in relation to recruitment, retention and development of diverse staff, including one or two, such as the 'proactive identification of staff with talent' (*ibid.*, p 19), that arguably contradict the notion of equal opportunities. Importantly, the research addresses the dilemma of support staff (e.g. cleaners, caterers

and IT staff) whose work is contracted out and suggests that their pay, conditions and treatment need to be addressed in terms of fairness, equality and diversity. There is mention (*ibid.* p19) of retaining staff who become disabled during their employment. Good practice from the NHS and Higher Education, including through the work of the Equality Challenge Unit, is applicable to the further education sector. Leadership development focussed on equality and diversity, monitoring and benchmarking, widening routes into employment and networking seem to offer the best routes for progress towards a diverse workforce. The suggestion in the research that networks of minority groups may in some cases have the perverse effect of further marginalising their visibility and efforts is contested by those who argue strongly for the strength of collectivity and collective action.

- 3.13 The prescriptions offered by the research – ‘setting the vision’, establishing an action group, harnessing good practice, implementing development activities, setting targets and encouraging independent providers – are all sensible in a ‘voluntarist’ approach, but may not necessarily achieve ‘transformation’.
- 3.14 Overall, the research is general, covers all the equality strands (not just disability) and shows little awareness of the nuances of disability theory and practice. Furthermore, those organisations highlighted in paragraph 3.8 as ‘lacking sectoral leadership’ will view this judgement as harsh. The DfES (now replaced by DIUS and DCFS) has produced an equality impact assessment of its skills strategy, and both the LSC and Ofsted have produced Disability Equality Schemes (Ofsted as a draft), partly for internal use and partly as models of good practice for the sector. There may be concerns about lack of attention in the Ofsted draft for example to working practices or recruitment targets for disabled staff, but there has been distinct progress. LLUK has given prominence to equality and diversity in its consultation on the draft FE Workforce Strategy (Lifelong Learning UK, 2007, Priority 4, pp 50–54). CEL has active development programmes in ‘Diversity and Equality’. Unions have been very energetic. UCU and Unison were funded by the DfES and ran a very successful project to implement disability equality for staff in further education colleges, including training, pilots, dissemination and a major publication on the Disability Equality Duty (Unison, 2007). Other union activity, including a UCU publication ‘Enabling not Disabling’ (UCU, 2006) and related work contradicts judgements about lack of sectoral leadership.

3.15 Despite these criticisms of the research, it has highlighted shortcomings in many areas of interest to this Commission.

## Higher education

3.16 In the higher education part of the lifelong learning sector, a major research programme consisting of six separate projects, funded by the higher education funding councils of England, Wales and Scotland, examined equal opportunities and diversity for staff in higher education. The research provided a considerable number of insights in terms of equality and diversity in the sector, including disability.

3.17 In one project, Deem, Morley and Tili (2005) examined equity in six 'case study' HE institutions. Paraphrasing the findings (*ibid.*, pp 5–6), equal opportunities policies were in place, but were not always comprehensive, up to date, easy to understand or properly communicated to staff. Some were reactive rather than proactive, and associated with legislative compliance rather than workforce empowerment and enhancement of working conditions. There was a gap between policy and implementation, and only slow 'mainstreaming' of equal opportunities policies into other institutional policies. In some cases, policies seemed to be more about promotion of institutions than workforce development. In relation to disability in particular, policies for staff in response to the DDA (1995) were in some cases completely absent whilst in contrast there were policies for students based on SENDA (2001) (*ibid.*, p 40).

3.18 There was a gap between senior management and staff perceptions, the former feeling that more equality progress had been made than the latter. Staff believed that discrimination was sometimes so subtle as to be unreported and undetected. The researchers referred to this as being part of the micro-politics and power relations of the institutions. Another way of expressing this is that particular work practices (of hegemonic groups) exclude, for example, people with disabilities who are unable to participate in the same practices (see below paragraphs 4.14–4.22). It goes beyond not making physical adjustments to the workplace to include disabled people and right to the core of exclusionary ways of working – employment inequity. Such exclusionary ways are often abstract and nebulous, and include 'faces not fitting', the formation of exclusive semi-formal or informal circles and partial or non-existent communication. In a significant statement relevant to all

minority groups, including disabled staff, Deem *et al.* report that from the instances they outlined:

*The micro-political terrain is perhaps the most challenging, the most sensitive, and the most contingent of all aspects of the conduct and implementation of equality and diversity policies. Institutional macropolicies can be counteracted and undermined by intense subjective struggles at the micro level of the day-to-day experiences of staff, struggles over stakes and interests specific to the academic game... This disconcerting backstage micropolitics highlights the 'disjuncture' between cultural/normative engineering, the official normative culture that the institution's policies try to enforce and the actual embodied and enacted norms, tactics, concerns, allegiances and priorities, on the other.*

*(ibid., p 67)*

- 3.19 On these grounds and generally, staff tended to be wary of using formal complaints procedures, fearing labelling or loss of promotion prospects. Again, there was the feeling that equal opportunities for students had a higher priority than those for staff. Whilst the policy framework for challenging inequalities appears to be getting stronger, responses from HEIs vary. Concerns about quality and the 'audit culture' (for example, the Research Assessment Exercise) often overrode concerns about inequalities. Deem *et al.* state that the situation with equal opportunities has improved since the 1980s and 90s (*ibid.*, p108) but that cultural change is going at a slow pace, not assisted by a persistent belief in an unmediated atmosphere of meritocracy in higher education which is blind to the practices that undermine it.

## Other research and developments

- 3.20 The Tomlinson report (1996) on inclusive learning made a considerable difference for all learners and students, and not just those with apparent learning difficulties. Organisations within the lifelong learning sector took great steps forward on the basis of this and subsequent work, to which infrastructure organisations such as NIACE, SKILL and the then LSDA made a large contribution through publications, projects and other work. Additional learning support has transformed the opportunities and

prospects. However, this welcome focus and innovation was centred on learners and students, and its benefits have not uniformly or consistently been transferred to meet the needs of disabled staff, as our report shows, and there has been relative, comparative neglect, including in financial terms.

## Section 4

# Specific issues

4.1 Most issues are dealt with by being interwoven into the text under the various headings of the survey, as explained in paragraph S.2 above. Disclosure is important enough to justify a separate treatment, as is the policy and theoretical context of the Access to Work scheme. Access to Work also merits an update on the current situation. There are also important separate treatments of employment equity and mental health.

## Disclosure

4.2 Disclosing impairment is an important issue for disabled people and for the institutions in which they work. Disclosure is generally about non-apparent impairments, including mental health difficulties and long-term health conditions. The other side of the coin, non-disclosure, both raises problems about the accuracy of data gathered by institutions of lifelong learning and why people choose not to or are unwilling to disclose. Both will have an impact on the effectiveness of institutions in making progress with their Disability Equality Schemes and impact assessments, and ultimately of course on the journey to inclusion. Compulsory disclosure, for example required for entry into nursing, teaching and social work, raises issues that cast light on voluntary approaches. Disabled people who do disclose face possible prejudice and exclusion; whilst disabled people who do not may in essence be forced to act dishonestly or risk exclusion. Compulsory disclosure is not likely to 'weed out' unsuitable applicants or employees and would not, according to the Disability Rights Commission (*Maintaining Standards: Promoting Equality*, 2007), have avoided some tragedies perpetrated by individuals working in the health professions.

4.3 Unison (*op. cit.* 2006, pp 14–15) presents a useful summary of the issues in the further education sector. It points out that in the sector, 'just over 2 per cent of staff disclose a disability [impairment] but the national estimate is that 20 per cent of the general workforce in the UK is disabled.' Unison argues that the low rate of disclosure is a 'symptom of the culture many disabled staff still feel exists round disability' (*ibid.* p14), implying that fear of discrimination inhibits disclosure. For organisations,

non-disclosure means that disabled staff may not be involved in disability equality processes, and cannot therefore offer help and advice in removing barriers. Successful mechanisms for disclosure within a culture of openness and lack of fear will mean that barriers and discrimination can be tackled.

4.4 Unison/UCU's training events revealed a number of themes associated with disclosure (*ibid.* p 15), among which were the following:

There was still fear of stigma linked to impairment

- Staff did not in some instances see themselves as disabled or did not know what constitutes an impairment
- Organisational attitudes still derived from the medical model of disability rather than the social model, and disability was seen as negative
- There were no clear means by which to disclose
- Disclosure was linked with fear of redundancy
- In some cases, staff saw no positive reason to disclose as their impairment had no impact on their jobs.
- Importantly, language used for disclosure was not appropriate. Staff were asked about their 'disabilities' (the medical model) rather than the barriers that existed in the workplace.

4.5 In Higher Education, similar issues have emerged. It has been recognised that equality of opportunity needs to be improved in the sector, and research by Strebler and O'Regan (2005), building on other initiatives, focused on staff who felt unable to disclose information about themselves – including those with non-apparent impairments.

According to their research '[i]n considering discrimination and disadvantage experienced by certain individuals within the HE system, it is important to consider two dimensions: entry to the profession/s and experiences within it/them' (*ibid.* pp 2–3). So disabled people (or people from other minority groups) can be 'tacitly or explicitly' excluded. Making entry dependent on certain credentials can be discriminatory, and the assessment of credentials itself can be biased towards those with the best 'social fit'.

4.6 Strebler and O'Regan refer to analysis of Higher Education Statistics Agency (HESA) data by the then AUT that highlights inequalities vis-à-vis disabled staff in HE. They 'are under-represented within HE compared with the population as a whole (0.9 per cent of academic staff are disabled compared with 19 per cent of the working age population in UK)' (*ibid.* p 3). The disability status of 11 per cent of academic staff is

unknown, and there is a very large reported discrepancy between the Labour Force Survey and HESA concerning the extent of disability. Non-disclosure of impairment is therefore a problem. Those with non-apparent diversity factors such as impairment (or sexual orientation) may choose not to disclose something which can lead to discrimination and its effects (such as loss of promotion). Strebler and O'Regan report work from the US suggesting that people who disclose a 'sensitive status' trade off the risk of discrimination against future potential gains such as financial benefits for partners – so disclosure is making a rational choice 'based on the relative costs and benefits in the labour market' (*ibid.* p 4).

- 4.7 Indications beyond the lifelong learning sector indicate considerable discrimination. According to Shaw Trust commissioned research,

*If you do choose to disclose your background of mental ill-health, this suggests you could be discounted by one out of five managers. What's more, nearly half of senior managers feel that employing people with mental ill-health in public facing roles is a significant risk...*

Shaw Trust (2006a, p 3)

- 4.8 Significantly, disclosure about impairment can also be about whether or not people believe they are disabled. Often, they have developed narrower definitions than those contained in the legislation. People with depression or mental health difficulties may believe that their conditions constitute temporary illness rather than impairment. Many believe impairment involves only mobility problems and not a range of other impairments identified and extended by various pieces of legislation.

## Access to Work

- 4.9 A report produced by the Commission on the Access to Work scheme can be found at [www.niace.org.uk/commissionfordisabledstaff/access-to-work](http://www.niace.org.uk/commissionfordisabledstaff/access-to-work), but is considered here in the context of disability theory and policy. The scheme operates to support individuals, financially and with advice, to get the special adjustments they need to function effectively and efficiently in the workplace. In the report, Jobcentre Plus states that a very high proportion of recipients of Access to Work support have favourable views of the scheme. There is no doubt that it has helped many thousands of disabled people to work and carry on working and generally it is well received and highly regarded. However, various

commentators question that its influence may be wholly positive. Grover and Piggott (2005) argue as others have done that the DDA (1995) 'individualises' disability by concentrating on individual rights and individual approaches to redress against discrimination', and that Access to Work is similarly an individual approach to addressing the disadvantage of disability.

- 4.10 They suggest that Access to Work is predicated on a deficit model of disability – the assumption that an individual's impairment is the cause of disability (*ibid.* p 708) – rather than being based on and an agent of the social model (Access to Work adjustments being attempts to 'level the playing field' for disabled workers). Access to Work is inextricably linked with an essentially limited and limiting concept of 'reasonable adjustments' in the DDA (1995) rather than what Mackney advocated in stark contrast: -

*In fact I'm on board for a relentless campaign for excessive, far-fetched and outrageous adjustments. On second thoughts I don't just want adjustments – such a technical and miserable sounding word – I want totally justified 'unreasonable'<sup>2</sup> transformations.*

Mackney (2007)

- 4.11 Thornton and Lunt's account of Access to Work (1995, p 41) adds other dimensions to the discussion. They point out that undoubtedly the scheme gives individual workers more control but paradoxically, individualised solutions might be better met by inclusive responses (see paragraphs 4.14–4.22 on 'Employment equity' below). They give the example of specialised transport to work facilitated by Access to Work being less desirable than a transport system genuinely accessible to all. A second example might be specially adapted telephones throughout a workplace rather than just for those with impairments.

- 4.12 Another contradiction of Access to Work, related to the points in paragraph 4.11, is that on the one hand it does give more control and more sensitive help to disabled individuals, but on the other can stigmatise recipients. It is about a focus on individuals in a legislative and policy environment that is moving back to an emphasis on social obligation.

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<sup>2</sup> This was a campaigning speech, with 'unreasonable' used in a rhetorical and ironic manner – what appears 'unreasonable' now may be perfectly reasonable a little way in the future.

4.13 It may be that Access to Work is both a stepping stone and catalyst towards full inclusion for disabled people. It has made and continues to make a vitally important contribution towards the provision of 'reasonable adjustments' for individuals who have required them under the DDA (1995). Meager, Hill and Wilson (2007, p 10) note that the DDA (2005) requires public bodies to go beyond the duty not to discriminate and places positive obligation [on them] to promote equality of opportunity for disabled people'. They suggest that this may 'provide, over time, a further pressure for more widespread provision of adjustments for disabled people' (*ibid.*, p 10). However, they note that 'ironically... the new obligations... may indirectly have a short-term impact in the opposite direction, due to the removal of Access to Work funding from parts of the public sector' (*ibid.*, p 10). Despite specific criticisms of Access to Work, its benefits far outweigh any criticisms.

## Employment equity

4.14 In some ways, Access to Work might come to be seen as the interface between individual and social models of disability, and a symbolic link on a journey from 'reasonable adjustments' for disabled people to 'anticipatory measures' to 'transformative inclusion', which is embedded and unnoticed. In the long term, this trend for adjustments would seem to be a sound 'social model' approach. Automatically embedded adjustments would induce public (and private) bodies to 'factor in' the costs to their budgets and the effects of such adjustments into their planning. Employment equity would become much more of a reality.

4.15 Just as in many public places, 'textured paving stones' and 'knurled knobs' to indicate crossing points for blind people are now commonplace, so multi-functional telephones, including with large-lettered key-pads and a TypeTalk facility may become standard in the workplace. Braille machines may become the rule rather than the exception, and disability leave and related policies established in the mainstream, along with full access for people with limited mobility. 100 per cent of sampled websites may satisfy the most basic of the former Disability Rights Commission's web access criteria rather than the 81 per cent reported by Meager *et al.* (2007, p 7).

4.16 Meager *et al.* (*ibid.*, p8) refer to the 'universal design' movement in the United States and 'design for all' in Europe, with greater emphasis on social inclusion. They report that there is little government strategy in this area, but that progress is driven by the disability movement and non-governmental organisation concerned with art and design, including the Royal College of Arts and the Centre for Accessible Environments, which latter organisation describes 'Inclusive design as being...

*... about making places that everyone can use. The way places are designed affects our ability to move, see, hear and communicate effectively.*

4.17 Inclusive design aims to remove the barriers that create undue effort and separation. It enables everyone to participate equally, confidently and independently in everyday activities.

4.18 An inclusive approach to design offers new insights into the way we interact with the built environment. It creates new opportunities to deploy creative and problem-solving skills.

[It does the following:]

- *places people at the heart of the design process*
- *responds to human diversity and difference*
- *offers dignity, autonomy and choice*
- *provides for flexibility in use*

[\(<http://www.cae.org.uk/inclusive.html>\)](http://www.cae.org.uk/inclusive.html)

Inclusive design environments encourage everyone to think of inclusion in a natural way.

4.19 Linking design and assistive technology to legislative developments, and echoing the messages of other sections, Meager *et al.* (*ibid.* p 10) show what progress may be made. The Disability Discrimination Act (1995) outlawed discrimination, but the principle of 'reasonable adjustments' to address disability issues rather than 'entitlement' was established then. The 2005 extension required service providers to remove physical barriers. The current duty to produce and implement Disability Equality Schemes goes beyond the duty not to discriminate and places a positive obligation on all public bodies to 'promote equality of opportunity for disabled people' – a duty that should lead to further widespread provision of adjustments.

- 4.20 Meager *et al.* (*ibid.*, p 21) report that ICT provision for disabled people in the UK is fragmented and requires more coordination and simplification across different policy areas such as health, social care, education and employment. Equally important is the principle of 'mainstreaming' adjustments for disabled people so that they are not part of some special 'programme' but a formal part of day-to-day activities for organisations and others.
- 4.21 Such 'mainstreaming' is not just a question of design and physical adjustments. It should also include revisions in working practices. One of the former Cabinet Minister David Blunkett's aides described real problems with his blindness:

*Take walking into a reception. That's a very different experience for David to [sic] that of a sighted person. Sighted people look around the room, notice their friends, spot people they haven't seen for a while, see people milling round and think, So-and-so would be good to talk to... David can't do that... [he might end up] standing in one place and receiving people like royalty. And that means he's on the back foot – they determine when they come and when they leave. So he'd always try and work the room with someone.*

Pollard (2005, pp 311-312)

- 4.22 An inclusive approach to this example of networking by a blind person would look very different, with everyone in the room taking into account the different needs of blind people, deaf people, those with mental health difficulties, Deaf people, and so on – akin to the community in Martha's Vineyard off Cape Cod in the nineteenth century, where Deaf people and a significant number of hearing people in the community used sign language. Inclusion requires non-disabled people to be proactive and make adjustments.

## Mental health

- 4.23 According to MIND, one in four people will experience some form of mental ill-health during the life course. Often, mental ill-health is associated with work and jobs, and even if it is not, it impinges on the

work people do and cannot be separated from it. Stress, anxiety, depression and other mental health difficulties generated in the workplace were considered in various pieces of research in the lifelong learning sector (for example, Deem *et al.*, 2005, Strebler and O'Regan, 2005, Cummins *et al.*, 2006). In a report commissioned by the Shaw Trust (2006), various key findings emerged that are as relevant to the lifelong learning sector as to other sectors. They are presented in the adapted summary in the next few paragraphs.

- 4.24 Mental ill-health is costly to organisations, the CBI calculating that the cost of mental ill-health to business was £9 billion pounds in salary alone. Of the 3 per cent of days per year lost because of absence, 36 per cent of those were caused by stress, anxiety and depression. There is further unknown cost in terms of lost time and productivity and in human terms – the resulting spoiled lives.
- 4.25 Employers underestimate the extent of mental ill-health in their workforces, to the extent that only 17 per cent recognise that three in ten of their employees may suffer ill-health in one year, and 45 per cent believed none of their employees would be affected. Many employers do not know what mental health is.
- 4.26 At the time of the research, many employers did not have formal mental health policies, and where they did, only a few thought they were effective – a finding perhaps linked with the fact that many employers believed that none of their employees was experiencing mental health difficulties.
- 4.27 Most employers do not have effective ways of identifying and managing mental health issues in the workplace, though one to one interviews, formal and informal, and regular staff surveys were used.
- 4.28 Crucially, the research showed that there was widespread discrimination, not necessarily conscious or intentional, against people who have had mental health difficulties. Many employers believed that if employees had been off work for more than a few weeks they would never recover, that people with any form of mental health difficulties are less reliable than others, and that negative attitudes of other employees are a major barrier to employing people with such difficulties. Many employers believed there were significant risks in employing people with mental health difficulties or using them in 'client

facing roles'. Many also believed that they needed more support in dealing with mental health in the workplace.

- 4.29 The research highlights 'stark contradictions' (*ibid.* p 3). Employees might wish to disclose mental health difficulties but fear discrimination (the same dilemma as faced by disabled people trying to enter various public professions (Disability Rights Commission, 2007)). Employers claim a strong understanding of mental health and a willingness to 'do the right thing by employees' but combine this with a clear lack of awareness. They profess willingness to deal with mental health but lack understanding of the resources available. The report characterises these contradictions as 'a clear cry for help – for more support, structure, and education as to how best to tackle mental health in the workplace' (*ibid.*, p 3).

## Section 5

# Conclusion

- 5.1 Much of the literature on disability, disability rights and disabled people in employment reflects the findings of the Commission, and in turn the findings confirm earlier research. There have been significant changes in the rights and opportunities of disabled people in general, and disabled staff in lifelong learning. We have moved from 'reasonable adjustments' to 'anticipatory measures' and a 'positive duty' to promote disability equality. However, there seems to be little evidence in the reviewed literature of a significant shift from compliance to culture change or a transformation of attitudes, physical environment and working practices for full inclusion – to return to Mackney's (*op. cit.*, 2007) phrase – 'unreasonable adjustments' and 'totally justified unreasonable transformations'.
- 5.2 In some cases, there has been a distinct and unsettling lack of progress and enlightenment, for example in facilitating access for disabled people to employment in large parts of the public sector, as reported by the Disability Rights Commission (2006). Thinking based on the medical model is still prevalent in parts of the lifelong learning sector, and where the social model is being adopted, its limitations not yet fully worked out in practice. It is significant that the proportion of 'declared' disabled staff in Ofsted was 4.7 per cent in July 2007, with only 1.3 per cent of Inspectors disabled (Ofsted, 2007, p 34). In the LSC, 2.8 per cent of the workforce declared a disability (LSC, 2007, paragraph 6). Other learning and skills organisations return similar figures. Yet according to the former Disability Rights Commission and reported in various sections of this survey, approximately one in five people (20 per cent) in the working age population has an impairment. The review confirms the findings of our own investigations and underpins our recommendations. In relation to full inclusion for disabled staff in lifelong learning, the gap between compliance and culture change is still very wide, and institutional discrimination widespread.

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