Representing Disabled Employees in the Workplace: The Need for a Multi-Dimensional Approach

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**Introduction**

In 2003, chronic illness and disability affected seventeen per cent of Europe’s general population and about fifteen per cent of its working age population. Disabled people also experienced twice the rate of non-participation in the labour market as people without disabilities (European Foundation, 2003). In the UK alone, it is estimated that one in five adults have a disability and that ‘most people who have a disability become disabled while in work’ (IPPR, 2003, 1). While much, often negative, attention is given to the 2.7 million people of working age who claim incapacity benefits (IPPR, 2003), less is paid to those who require workplace rehabilitation or adjustments to their work to continue in employment. There is therefore a need for more information in this area and it is beginning to be recognised that: ‘There are insufficient measures in the workplace for retaining, reintegrating and rehabilitating people who develop a chronic illness or disability during their working life’ (European Foundation, 2003). This paper is based on data collected for an Economic and Social Research Council (ESRC) funded pilot study that aimed to document employee experiences of negotiating workplace adjustments under the terms of the Disability Discrimination Act (DDA) 1995. It examines the adjustment process from the neglected perspective of disabled employees and reveals what is often an ad hoc process of formal and informal negotiation between employees and managers. The study also addresses issues of representation that are specific to this aspect of workplace negotiation.

While there is a small body of research on disability and work, it has tended to focus on employer knowledge of the DDA and employer attitudes towards disabled employees. Evidence suggests that among employers, ignorance of the law is widespread (TUC, 2003; Woodhams and Danielli, 2000; Stacey and Short, 2000), that support for disabled workers is lacking, and that training in disability awareness is minimal (TUC, 2003, 7). The few studies that address the issue of reasonable adjustments (Meager et al., 1999; Irving and Kleiner, 1999) also reveal misunderstandings and uncertainties among employers of their legal obligations. That less attention has been given to employee workplace experiences and perceptions of the law is, in itself, significant. One possible explanation for this is that disabled people are under-represented in the academic community, something that is difficult to determine given that many impairments are invisible. Alternatively, non-disabled researchers may feel uncomfortable conveying the opinions of disabled employees and have thus concentrated on the management of disabled people. The cause is difficult to determine, though one might speculate that because the study of workplace equal opportunities has gradually moved out of social science departments into schools of business and management, the link between work and society has been given less emphasis. The importance of this link to debates about disability and work should not be underestimated and is illustrated by the dominance of the ‘social model’ in disability studies. From this perspective, the social organisation of work and social meanings that stigmatised people with impairments are what ‘disable’ people in the workplace (cf. Barnes, 1992; Barnes and Mercer, 1997). These social factors should therefore form the central point of analysis and might, for example, include a critique of common social (mis)conceptions that negatively equate disability with inability, inadequacy, weakness and inefficiency and which may influence approaches to the management of disabled workers. However, when analysing the impact of workplace
disability law the social model is problematic, given that the DDA is based on a medical model of disability, which is ideologically opposed to it. Thus, the focus of the DDA is on the individual and their impairment, rather than a view that sees disability as a public, social and collective concern and responsibility. This individualisation and medicalisation of disability issues raises important concerns for collective organisations such as trade unions seeking to represent employees, some of which will be explored further below.

To comprehend the implications of the DDA for representative organisations it is first necessary to understand its legal context. The employment provisions within the DDA 1995 came into force in December 1996. Under section six of the Act an employer is obliged to make ‘reasonable adjustments’ to the physical workplace environment and/or to employment arrangements (e.g. hours of work, allocation of duties), to ensure that a disabled person is not put at a ‘substantial disadvantage’. This, for the first time, gave disabled employees the right to challenge discriminatory practice in the workplace. The definition of a ‘disability’ in law refers to a person’s physical or mental impairment, which may ‘have a long term effect on his (sic) ability to carry out day to day activities’ (DDA, 1995, Section 1 (1)). This is a medical definition and is also applicable to a person with a history of disability or someone with a progressive or recurrent condition (Lockwood, 1999). The DDA differs from other equality legislation because it places a specific duty on employers to take positive action by making workplace adjustments. The notion of ‘adjustments’ is unique. An employer who fails to make an adjustment not only discriminates against a disabled employee, but through this failure to make adjustments may also prevent an employee from partially or totally fulfilling their employment obligations. The consequence of discrimination against a disabled employee may therefore render them incapable of doing their job. The DDA also differs fundamentally from other legislation in the way that it focuses on the concept of ‘difference’ and ‘different treatment’ (where necessary) as opposed to the goal of ‘equal treatment’. Different treatment under the terms of the DDA is positively required and is operationalised through adjustments tailored to individual circumstances. This focus on the needs of individual employees may challenge established equal opportunities practices and how managers have traditionally interpreted concepts of ‘fairness’ and ‘equality’.

The Court of Appeal has referred to the DDA 1995 as ‘an unusually complex piece of legislation which poses novel questions of interpretation' (cited in Owen, 2001, 3). Amendments to legislation in 2004 and 2005 have further added to this complexity. Inspired by the European Union’s 2000 ‘General Framework Directive for Equal Treatment in Employment and Occupation’ these have affected the interpretation of UK law, in particular the definition of disability discrimination. The concept of ‘direct discrimination’ was introduced into disability law together with a specific provision on disability harassment, defined separately from discrimination and which refers to unwanted conduct for a reason related to a person’s disability (DRC, 2005). Other recent changes have included the removal of the small employers’ exemption and a statutory duty on public sector organisations to actively promote disability equality, which comes into effect from the end of 2006, under the terms of the Disability Discrimination Act 2005. This duty is closely modelled on the Race Relations (Amendment) Act 2000 (Incomes Data Services, 2005). The DDA has attracted widespread criticism (e.g. Chadwick, 1996; Goss et al., 2000; Disability Rights Commission, 2002; Doyle, 2003; Woodhams and Corby, 2003). Most
critiques challenge the legislation’s focus on individual impairments as opposed to the physical, social and attitudinal barriers that serve to disable people in organisations and society (Barnes, 1991; Oliver and Barnes, 1991; Boxall et al, 2004). Nevertheless, some have argued that the approach adopted in law is consistent with other equality legislation in the UK based on biological criteria (Woodhams and Corby, 2003, 165).

Our examination of issues of ‘representation’ in the workplace utilises the concept in its broadest sense. We acknowledge that a number of different agencies may be involved in the representation process and that disabled employees can often seek support and advice from a wide range of different types of organisations. For example, disability support groups offer specific help and advice to people with specific impairments and may be the first point of contact for an employee. The type of advice sought from a voluntary support group may however differ from advice sought from a trade union. Some advice may be practical and domestic, whereas other advice might be legal or employment related. An important aspect of our research was to compare and contrast the experiences of disabled employees represented by trade unions, government and voluntary agencies, and those who represented themselves. Government agencies such as Remploy, Access to Work, and the Disability Rights Commission (DRC) do not exclusively represent employees, but also offer specialist services to employers and we were keen to learn from their experiences. It is also recognised that disabled employees may find themselves in need of representation in different situations. These may include those returning to work after an absence because of illness or disability (re-entries); those employed with an existing disability who request adjustments (containments); and those who are forced to leave the labour market because of a disability (exits).

**Primary data**

**Methods and approach to research**

Research into the process of making reasonable adjustments has almost always viewed making adjustments a managerial prerogative. The dominant methodological approach has moreover been quantitative and questionnaire-based with little use of in-depth qualitative, experiential interviews. We consider in-depth interviews are essential for the understanding of the interaction of factors involved in the adjustment negotiations for disabled employees and, given the relative neglect of employee experiences, we feel it is important to ‘give voice’ to participants (Shakespeare, 1996). Twenty face-to-face individual semi-structured tape-recorded interviews, lasting between one and two-and-a-half hours, were carried out with a sample of fourteen female and six male disabled employees. These were supplemented by interviews with a number of voluntary, governmental (the Disability Rights Commission (DRC) and Remploy) and trade union organisations involved in providing advice and representation to disabled workers. A wider objective of this pilot-study was to build up a panel of individual and organisational contacts who would be interested in participating in a larger project and could be involved in its methodological design from the outset.
Individual interviews sought to gain insights into the ‘lived experiences’ of employees and were guided by a semi-structured schedule covering broad topic areas. These areas included details about employment and employer; knowledge of the DDA; help and advice sought or received from internal (HR or occupational health (OH) departments) or external agencies (voluntary, government organisations or unions) and the process by which adjustments were sought (see also Foster 2006, under review). Making contact with respondents was often a slow process that involved first contacting a voluntary or representative organisation and meeting with them to explain the objectives of the project. Some introductions were made through voluntary organisations and trade unions’, however we were concerned that such organisations might ‘filter out’ negative cases of representation so we also requested that they circulate details of the project internally, requesting respondents contact the research co-ordinator directly. In addition, posters were placed on support group web sites and GP surgeries, with the purpose of eliciting some responses from non-union employees. Other studies (c.f. Cunningham et al, 2004) have located interviewees through employing organisations, a route that raised concerns that those experiencing discrimination might be excluded from the research. Interviewees were given assurances of anonymity and that the research would be used for academic purposes, as well as being fed back to participant organisations to help improve the workplace representation of disabled people. We were also fortunate that during the research a meeting with mental health support groups working alongside UNISON Wales put us in touch with a group of counsellors who offered their services free to participants.

Sample characteristics of individual interviewees

Table 1 details the occupation, gender, impairment (in terms of visibility or invisibility) and type of adjustments received by the twenty employees interviewed. The category ‘impairment’ has been confined to noting whether an impairment is visible or invisible. This is because one of our research questions sought to explore whether people with visible impairments have different workplace experiences than those whose impairment was not visible. We speculated that those with invisible impairments might encounter ‘legitimacy problems’ with managers, colleagues and representatives, whereas those with visible disabilities were more likely to experience stereotyping. Specific details of impairments are only provided in the paper where this information facilitates insights into people’s discriminatory attitudes towards an employee or where it impacts upon an employee’s treatment. This approach is adopted because we recognise that it is often not the impairment itself, but the way in which society reacts to an individual with an impairment that stigmatises or negatively defines them and is therefore disabling.
Table 1: Respondents’ occupation, gender and adjustments under DDA.

<table>
<thead>
<tr>
<th>Case</th>
<th>Occupation</th>
<th>Gender</th>
<th>Impairment</th>
<th>Adjust. Physical</th>
<th>Adjust. Work itself</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Railway engineer</td>
<td>Female</td>
<td>V</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>University Professor</td>
<td>Female</td>
<td>I</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>3.</td>
<td>Local Government youth worker</td>
<td>Female</td>
<td>I</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>4.</td>
<td>NHS nurse</td>
<td>Female</td>
<td>V</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>5.</td>
<td>Care Worker (social services)</td>
<td>Female</td>
<td>I</td>
<td>(R)</td>
<td>(R)</td>
</tr>
<tr>
<td>6.</td>
<td>Local government (clerical)</td>
<td>Male</td>
<td>V</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>7.</td>
<td>Social Worker</td>
<td>Male</td>
<td>V</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>8.</td>
<td>Teacher</td>
<td>Female</td>
<td>V</td>
<td>X (R)</td>
<td>X (R)</td>
</tr>
<tr>
<td>9.</td>
<td>Head of Department (University)</td>
<td>Male</td>
<td>I</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>10.</td>
<td>University researcher/lecturer</td>
<td>Female</td>
<td>I</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>11.</td>
<td>Primary school teacher</td>
<td>Female</td>
<td>I</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>12.</td>
<td>Clerical officer (public sector)</td>
<td>Female</td>
<td>I</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>13.</td>
<td>Assistant Technical Director (public sector)</td>
<td>Male</td>
<td>V</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>14.</td>
<td>Departmental administrator (medical)</td>
<td>Female</td>
<td>V</td>
<td>X</td>
<td></td>
</tr>
<tr>
<td>15.</td>
<td>University Academic (Reader)</td>
<td>Female</td>
<td>I</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>16.</td>
<td>Disability education officer</td>
<td>Female</td>
<td>V</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>17.</td>
<td>Continuing education officer</td>
<td>Female</td>
<td>I</td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>18.</td>
<td>Clinical psychologist</td>
<td>Male</td>
<td>I</td>
<td></td>
<td>X (R)</td>
</tr>
<tr>
<td>19.</td>
<td>Occupational health therapist</td>
<td>Female</td>
<td>V</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>20.</td>
<td>Further Education lecturer</td>
<td>Male</td>
<td>I</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(Table reproduced from Foster, D (2006) (currently under review)).

Key:
$X = yes$
$V = visible impairment$
$I = invisible impairment$
$(R) = retired (either after reasonable adjustment had been made or where no adjustment was made).

The categories ‘physical adjustments’ and ‘adjustments to work itself’ in Table 1 are also important because they illustrate the two main types of adjustments available in the workplace under the DDA. Evidence suggests (TUC, 2003) that employers better understand adjustments that are ‘physical’ and visible, such as adjustments to buildings or the provision of equipment, rather than adjustments to ‘work itself’. It is also possible that the latter are more likely to be interpreted as alterations to an employee’s terms and conditions of employment and might thus be regarded as more controversial (Foster, 2006 (under review)).
Key Findings

All of those interviewed, with the exception of one, who was employed in the privatised railway industry, were employed in the public sector. This was not an intentional sample characteristic, it can nevertheless, be justified within the remit of the objectives of this particular pilot study given that its primary purpose was to document a random sample of disabled employee’s experiences in the workplace, irrespective of occupation. This concentration on employee experiences is deliberate and sought to redress a current imbalance in existing research. We do however, recognise that an absence of private sector interviewees could raise important issues for future research, in particular, research that focuses more on policy and practice rather than experiences and outcomes for employees. We also acknowledge that a number of characteristics are associated with public, as opposed to private sector employment, and might potentially affect the treatment of disabled employees in the workplace. Factors include the size of public sector workplaces and higher incidence of disabled employees in the overall workforce; a history of employment policies relating to disabled workers, e.g. the quota system that preceded the DDA, and more recently the ‘Disability Equality Duty 2005’; the existence of a Human Resources presence and formal equal opportunities policies (Hoque and Noon 2004); and the relatively high levels of unionization present in this sector. This last point is of particular interest here, though Hoque and Noon’s (2004) analysis of data on equal opportunities policies and practices in the public and private sectors from the 1988 Workplace Employee Relations Survey (WERS) suggests, less influential than sometimes assumed, for they conclude that:

“While unionized workplaces are more likely to have a formal policy, those policies are no less likely to constitute ‘empty shells’” (Hoque and Noon, 2004: 481).

Table 2 details aspects of the sample interviewed relevant to this debate, including knowledge of the DDA, trade union membership and involvement. The sample size is relatively small and such statistics can therefore only provide a general overview.

Table 2: key areas of questioning

<table>
<thead>
<tr>
<th>Key areas of questioning</th>
<th>No. of respondents</th>
</tr>
</thead>
<tbody>
<tr>
<td>Developed impairment while in employment</td>
<td>14</td>
</tr>
<tr>
<td>Declared disability at recruitment</td>
<td>6</td>
</tr>
<tr>
<td>Gender cited as significant when negotiating adjustments</td>
<td>3 (all women)</td>
</tr>
<tr>
<td>Unaware initially that they were covered by the DDA</td>
<td>6 (2 of were subsequently ill-health retired but became self-employed)</td>
</tr>
</tbody>
</table>
Attempts by employers to dismiss on ‘incapability’ grounds | 2 (In addition 1 respondent failed to have rolling contract renewed)
---|---
Reported employer did not understand DDA | 10
Advice given from HR department | 6 (only 2 had positive experience)
Member of a trade union | 14
Active trade unionist | 4 (2 active as a result of experiences)
Helped by union branch | 1
Helped by regional trade union officer | 5
Felt let down by their union | 3
Given poor / wrong advice by union | 5
Given legal representation by union | 2
Number of voluntary and Government funded organisations consulted | 10

Fourteen of the twenty respondents interviewed were members of a trade union and of the remaining six non-union members, three had sought help and advice from voluntary organisations. In total, seven voluntary organisations were cited in interviews as having provided help and support in the workplace together with three government funded organisations – Access to Work, the Disability Rights Commission and Remploy. In terms of representation among this relatively small sample, Table 2 illustrates the paucity of advice at the local trade union branch level for disabled employees. We explore this finding further below using individual case studies and the words of respondents.

Interviewee 1, a railway engineer provides the first example. This respondent developed her impairment while in work and became a wheelchair user. At this point the subject of toilet facilities that would accommodate wheelchair access became an issue. A toilet cubicle was hastily installed in her workplace but a carpet rather than a non-slip floor were put in the cubicle and grip rails were hastily put in, but at the wrong level. It was while trying to use these facilities that the respondent experienced a serious fall. She explained:

R: When I had the fall in the toilet, I realised I couldn’t reach the emergency buzzer which was suspended above the toilet but on the wall side of the toilet and I was on the floor on the other side of the toilet. They (HR) did organise for some cup hooks to run a string from the other side of the room and put a floor length pull on it. The first time I tested it, it didn’t work though…

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I: And what attitude do you think you were met with when you raised these issues?
R: That I was making a fuss...it was a bit exasperating. “Oh it’s her again, she’s found another problem”.
I: Did you approach your trade union for advice?
R: No, I don’t know, there was nothing in the handbook about being a disabled member.

In this case, the fall lead to further complications in the respondent’s medical condition, forcing her to take extended sick leave. After six months her line manager phoned her and told her “not to bother to get better because they were doing an office reorganization and they would have to get rid of someone”. It was at this point that she contacted her trade union, the RMT, which saw her case as a Health and Safety at work issue rather than an opportunity to draw on the DDA and referred her to a solicitor for advice about the fall at work. Her experience with the union was however at times frustrating because of her disability. As she explains:

I: Did anyone from the trade union visit you?
R: No, I had to keep ringing them to find out what’s happening.
I: Was this union representative a branch or regional official?
R: He worked for the two buildings and was branch.
I: Was he supportive?
R: Well he was supportive when we spoke to him but he never seemed to actually get anything done. I actually lost complete faith in him because it took so long to find a solicitor.

In fact, it took so long to find the solicitor that time ran out to lodge a complaint at an Employment Tribunal. When interviewed, she was still hopeful that her trade union could help her, but they seemed less concerned about negotiating a graded return to work for her and she was despondent that she might never return to work on a permanent basis. Despite her incapacity, no one from her union had visited her at home to discuss her case with her.

Another interviewee, this time a female professor had a more positive experience of her trade union that led to her becoming a union activist. She explains:

R: I’d always been a member of the union. I wouldn’t say I was active before that [i.e. before being personally affected by the DDA] but I had some very brief involvement...I’d been to one of those equality sessions in London and that’s actually how I got into the union.

Interestingly, her involvement in the union followed her own attempts to negotiate reasonable adjustments and her feeling that she lacked knowledge and expertise. As is the case for many employees she found herself attempting to negotiate adjustments alone. Through the London meeting she had however met the union regional organiser:

R: I didn’t approach the union locally...I had approached the local regional organizer and he basically said, as I suppose he would really, why don’t you take it up with the local people. Because I’d never been to any meetings, I did feel rather uncomfortable raising it with people I’d never met, but also I felt I didn’t know what I was letting myself in for...But of course, as it happens, because I became part of the local exec., I can see that was a bit of mistake.

However, she added:
I wasn’t terribly impressed when I did eventually start looking at the DDA. I wasn’t impressed by the union stuff on it.

When questioned as to whether she found the union helpful, she responded:

Well, the regional man yes he was helpful, but I don’t think he knew much about the DDA and I don’t get the impression now they know much about the DDA. I think it’s a problem.

An interviewee, who had been an active trade union workplace representative for six or seven years in the NHS prior to becoming disabled also found that after becoming a wheelchair user, she encountered problems. Extracts from her interview are cited at length below because they illustrate a number of significant issues. First, there is the issue of knowledge about the DDA at local union branch and regional levels. This respondent’s experience shows how one individual in the union can make a difference, but also highlights gaps in the education of branch union officers. Interestingly, when asked if she had thought of involving the union in the adjustment process, despite her own activism she had not thought to do so, though she reserved a lot of praise for the full-time regional officer who latterly intervened on her behalf to try to resolve her difficulties. Moreover, her comments reveal that like many organisations, this one [the NHS], didn’t appear to have an obvious procedure for making adjustments.

I: What was the quality of any advice you received from your trade union?
R: Again, X [the regional equality officer for UNISON] is brilliant; she knows what she’s doing.
I: Did you go to the branch first?
R: Well, X is the branch. Although she’s good, she said I’m not being discriminated against because I’m being treated like everyone else, not different. Again, it’s the knowledge, it’s the learning… X is our branch officer, in all fairness, bless him, but doesn’t know much about the DDA...
I: Were the attitudes of the trade union you came across—were they supportive?
R: Oh, brilliant. They may not know the full facts but they were brilliant. In fact, it was X [the regional equality officer] who said about a tribunal. I said I’d got nothing else to lose; I’d just go for it.
I: Did you actually request specific reasonable adjustments at any stage through the union?
R: No, I didn’t think to actually, I had the workplace assessment, so that was the adjustments.
I: When the reasonable adjustment requests were made, were they made formally or informally?
R: The first ones were made formally. We had the work place assessment and they did things like the gel rests and the height of the computer, etc.
I: Was there any procedure written down about how you should make requests for reasonable adjustments?
R: No
I: Did you ever look for one?
R: No, I never thought to. Whether or not the Occupational Health has got the procedure that they go through when they come for the adjustments.
I: But there wasn’t one that was obvious?
R: No
This part of the interview focused on the physical adjustments made for this employee. However, the same respondent encountered problems with other types of adjustments that would fall under the category of ‘adjustments to the work itself’. The most problematic adjustment concerned alterations to hours of work, which were requested because of problems with fatigue. Conflict around this particular issue led to the interviewee having to take time of work because of stress. When interviewed she was still away from work and her union was seeking a re-deployment for her within the organisation.

An example where trade union representation was effective was in a case involving an employee experiencing workplace stress. This stress was also having an impact on her physical health and the way in which she managed her diabetes. She was so overwhelmed by the situation at work that she often forgot to take breaks and eat at set times. The poor handling by a manager of a situation that led to the bullying of this employee and ultimately her stress condition, meant that she was absent from work for a long period of time. Because of extended periods out of the workplace this respondent found it increasingly difficult to face returning to work full-time, thus her union got involved in organising a return to work programme:

R: my union was involved and Occupational Health. I had counselling through the counsellor. I’ve had eight sessions and the union directed me to X who did the assessment on me and they are going to come in and support me every few weeks.

I: So did you feel supported once you were off sick?

R: Once I was off sick, yes. I can’t fault occupational health, or X of UNISON.

I: So you got this return to work set up with occupational health. At what point were you union involved? And who did they meet?

R: They met occupational first and she came with me to every appointment so Occupational Health said they would phase me back into work—it was normally a four week plan.

I: Were they alright with that— X [UNISON rep.] coming to the appointments?

R: Yeah. I felt the union really fought for me.

I: So you weren’t actively involved in the trade union before this?

R: No, I was just a Unison member.

I: At what stage did you approach the union? It was first about the bullying rather than the illness. So they took up your case about the bullying …

R: We’d asked about them when my colleague was ill and someone advised to take it to occupational health and she tried and left a message on the answer phone. They never phoned her back and you know how you never pursue it. So I knew with me what to do. I needed to go to Occupational Health and I needed to go to the union.

I: Did you know about the Disability Discrimination Act then?

R: I knew about it through university, but I never regarded that [i.e. the diabetes and stress] as a disability.

I: Especially because it’s an invisible disability.

R: Yes. I never thought of it. When I filled the form out and they asked if I had a disability I never entered it until this occurred and my union said you are disabled. And yet, I’d always regarded young people with learning difficulties as discriminated against. But I never saw myself in that box.

In this instance the union also negotiated that this employee be given a new line manager to report to and a mentor to support her. The union regional officer also
involved Remploy in the return to work programme and they monitored the situation, liaising with both the employer and the employee separately and together. Remploy and UNISON also devised a novel programme between them to involve this employee in a scheme that interested her, that of breast cancer awareness. Working with the charity the employee helped develop educational and promotional materials as a means of getting slowly back into work. She did this on a voluntary basis while on sick leave and gained both confidence and fulfilment by doing so.

The role of Remploy in the workplace is an interesting one and was specifically cited by two respondents as helpful when negotiating ‘return to work programmes’. In some localities Remploy has built good relationships with trade unions such as UNISON and the GMB. Remploy has long-standing links with the GMB, although traditionally this relationship has centred on its role as the union involved in representing workers in ‘sheltered’ factories. Because of this long-standing relationship with ‘sheltered’ employment, Remploy is often associated with finding work for people with severe learning disabilities to the exclusion of other employees. This has influenced their public image and often leads to an assumption that it plays a limited role in helping other people with disabilities. In fact, as we learnt during the project, Remploy representatives can help intervene in the workplace and meet with employers to negotiate adjustments or return to work programmes for all employees. As well as working with agencies such as Job Centre Plus to help find work placements for those on long term incapacity benefit, Remploy also works to help people in work, stay in work. As one Remploy representative interviewed for this research explained, their role is much misunderstood:

“when you mention the word Remploy the stigma that’s attached to the name, cos they think we basket weave in the factory still which is totally wrong.”

and added:

“we do anything to keep people in work… we can intervene with an employer to try to get them employed to work with an individual…..and we have an employment co-ordinator who will actually support that individual in the workplace for as long as it’s required…we deal with people with any disability, in or out of work”

Evidence that non-union agencies were working alongside trade unions is interesting, though we found only two further cases, one involving SCOPE and another involving the Teachers Stress Helpline. These were, however, examples of voluntary organisations working with individuals rather than directly with trade unions on individual cases. The relationship between UNISON and Remploy was of interest because it included jointly working on representational issues within the workplace (e.g. negotiating return to work agreements with employers) and included advisory roles with the union itself on issues such as provision of specialist equipment etc. In other instances where respondents did ‘mix and match’ advice, it was usually confined to advice rather than representation. For example, a number of respondents with sight impairments had involved the RNIB in the implementation of adjustments relating to computer packages because it had a particular expertise in this area. Unions were on the whole poor at linking up with voluntary organisations, however, we did find one exception in our research which was a significant alliance between unions, Remploy and voluntary organisations at a regional level. This was called the ‘Healthy Minds at Work’ initiative that involved UNISON Wales, a number of other
public sector trade unions, Depression Alliance, Teachers Stress Helpline, Remploy and a black mental health group. ‘Healthy Minds’ has successfully crossed over boundaries between unions and voluntary and governmental agencies in this much neglected area and have gained European Social Fund monies to pilot a project in the Welsh Valleys.

During our research we also undertook a limited number of interviews with full-time trade union equalities officers and union representatives involved in disability networks. Interviews were conducted with UNISON, PCSU, TGWU at a regional level within Wales, alongside interviews and meetings with DRC officers in England and Wales. Because of constraints we are unable to explore data from these interviews in any great depth. However, we pick up a number of themes that have already been touched upon above. For example, we explored whether unions, other than UNISON, routinely link up with voluntary organisations. Representatives from the PCSU for example when asked about working relationships with voluntary organisations drew a distinction between consulting and ‘working with them’:

..Only that we approach them for advice, we don’t actually work with them

adding:

I think the links could be improved…. I think we need to build on those now, work together more on them

However, like many unions, the PCSU believed that initiatives on disability should come from the ‘bottom up’ within the organisation.

I’m a full-time officer and I’m responsible for the policy side and I think we decided really or my view is this should be bottom up….it’s people on the Disability Forum [an organisation within the union] who should be discussing…issues regarding disability and what support they then want from the union, what campaigning work should we be involved in, what assistance do they need.

This officer also expressed the view that unions should do more for disabled employees and be prepared to use the DDA to take employers to tribunals as well as using the Act more to help employees experiences problems with managers over long term sick leave:

I get the feeling that you know, a lot of union representatives haven’t woken up to the fact that many members are protected under the Act, and we should…be opening up negotiations with management, reminding them of that.

As for the DDA itself, this union officer felt it could ‘be complex’ and more education was needed at all levels within the union. He also felt that the union should not be ‘afraid to use the law to defend disabled members’. He referred to this reluctance to use the DDA on a number of occasions, believing it was perhaps the result of representatives’ lack of confidence in this area. These concerns were echoed by other union equalities officers interviewed.

The TGWU regional equalities officer interviewed made an interesting contribution to the debate about whether unions and voluntary organisations should be working together on disability issues. While recognising that this would be useful, she also believed that voluntary organisations and union members needed to think
differently and not pigeon-hole issues separately as ‘disability problems’ and ‘employment problems’. In relation to voluntary organisations she commented:

I think that all of these sort of organisations that have been set up to assist people with a particular disability have a very important role to play. But they don’t necessarily have that way in employment terms, you know, they would maybe refer things to the Disability Rights Commission if somebody is being discriminated against in the workplace, rather than say to the individual are you a member of a trade union, have you approached your trade union. Cos it’s quite surprising the number of individuals who are members of a trade union who find themselves with a problem, a work related problem which is as a result of their disability. But they don’t, they see it as a disability problem rather than an employment problem.

This is significant and perhaps suggests that as well as trade unions becoming more aware of voluntary organisations, the latter need to better utilise the expertise of trade unions in the workplace. Moreover, it also indicates that ‘disability’ is perceived first as an individual issue and only secondly as an employment issue, even where the advice sought is employment related. Further comments by this TGWU representative illustrate this point:

They don’t go to the union first, now as I said I’ve done some work with the RNIB and the Institute for the Deaf and things like that, and I’ve highlighted that to them because of different things. And so they’ve said oh bloody hell yes of course, we should be, but it’s same with the Equal Opportunities Commission, it’s only in the last couple of years that if somebody’s phoned them up because they feel that they aren’t being paid equally that they’ve said well aren’t you a member of a trade union. And the individual has said yes, well why don’t you speak to your trade union about that, and it’s this sort of getting the message over that discrimination within the workplace is an employment issue as well whatever the area of discrimination is.

The theme of ‘employment as a disability issue’ was evident throughout the interview. For example, asked whether she thought that her union did enough for disabled members this interviewee replied:

I don’t… sometimes it’s not a case of resources, again it’s these sort of hidden things where somebody who has a disability does not necessarily see the disability as an employment issue. And so it’s, you know we mentioned a minute ago about hidden disabilities and things, there are any number of people out there within the workplace who have a disability. And if they are having problems in work they treat it as part of their disability, as opposed to an employment issue. And although employers may be more aware of the DDA the employees don’t, and they tend to cover things up and try and get by with things rather than highlight the fault, the fact that they’re having problems.

Interestingly, the comments made by this interviewee bring the debate back to key aspects of the discussion in the first part of this paper. Here it was argued that disability is perceived as an individual ‘problem’ rather than a collective ‘social’ concern and that this is a perception perpetuated by the way in which the DDA was framed. The DDA is not only a complex piece of legislation but it also contributes to a ‘de-politicisation’ of the disability debate both in the workplace and wider society (c.f. Foster, 2006 under review).
Concluding analysis

This article questions whether traditional trade union approaches alone can meet the needs of disabled employees, given that specific characteristics distinguish disabled employees from other groups and pose challenges to representative organisations. These challenges are threefold. First, employees with disabilities are not an easily identifiable constituency, i.e. many impairments are invisible and fears of discrimination can mean employee’s consciously choose to conceal them. Second, employees defined under the terms of the DDA as having a disability may not even realise that they belong to this constituency. Third, the medical model of disability utilised by the DDA may demand some degree of expert knowledge when representing an employee. This is further complicated by the possibility that the same or a similar impairment could have different effects on different people in the same or in different job roles. These issues are complex and we argue require a multi-dimensional approach to representation that recognises the need for specialist knowledge that is both person specific (medical) and task specific (technical/organisational) while keeping in mind that ‘disability’ is a social, collective issue and not an individual ‘problem’.

This multi-dimensional approach to the representation of disabled employees advocated by us in this article also raises questions that link with wider debates about trade union representation and diversity (e.g. Greene and Kirton, 2004; Healy et al 2005; Abbott, 2005). Greene and Kirton (2004) for example explore the discourse of ‘Managing Diversity’, which predominantly focuses on individuals and the business case for equal opportunities. In doing so they highlight the tensions this approach creates for trade unions representing employees, particularly at the lower end or ‘sticky floor’ of organisational hierarchies. Like others (e.g. Liff and Wajeman, 1996), they criticise ‘managing diversity’ for its focus on individual differences and individual policies and argue that “by moving the focus away from discrimination and disadvantage the equality agenda is arguably depoliticized or rendered less sensitive to backlash from already advantaged groups and individuals” (ibid:7). Greene and Kirton (2004) concentrate their debate around issues of race, gender and class and in agreement with Munro (2001) argue for a balance between acknowledging diversity and social group identities. They therefore propose a framework that distinguishes between the concept of ‘Managing Diversity’ and ‘diversity management’ and that allows “sameness and difference to co-exist” (ibid:15). Disability as a social cleavage is given less attention in their debate than gender and race. Yet in many respects, as we have argued here, because of the way in which the law conceptualises disability and the medical model individualises it, ‘disability’ highlights tensions between diverse and social group identities well. Moreover, it demands both individual and collective responses from trade unions, which need also to be vigilant not to lose sight of the politics of disability in equal opportunities agendas (c.f. Foster, 2006 under review). It is therefore essential that trade unions engage, on an ongoing basis, in educating all employees in the workplace and all members and representatives within their own organisations, so that ‘difference’ can be recognised without resulting in prejudice and alienation.
Acknowledgements

This article was based on data collected for an ESRC funded project (RES 000-22-0722) entitled ‘Disability, Gender and Representation in the Workplace’. We thank the ESRC for their support during difficult circumstances. Acknowledgements are also due to Carol Woodhams for contributing some interview data and to Peter Scott and Marion Hersh for their help and constructive suggestions along the way. Last, but certainly not least, thanks to all anonymous participants in this project. If we advance the understanding of disability issues in the workplace just a little, we hope their participation in this project was worthwhile.

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