

## **Employment and the Disability Equality Duty**

**The Disability Equality Duty and  
employment – a straightforward  
guide**



## Foreword

We all want to live in communities where we can participate fully. We all want the opportunity to earn a living and support our families. Yet we know that many disabled people, including those with long-term health conditions, find barriers to gaining work or training. It is not uncommon for disabled people to report that ‘I am only disabled when I come to work’. Too many disabled people are trapped by low expectations of what they can achieve and their potential is unrealised.

To help this change, we now have the Disability Equality Duty (DED) for the public sector. This new legal duty will mean that any public authority must look at ways of ensuring that people who meet the definition of disability in the Disability Discrimination Act are treated equally. A similar duty was introduced on race equality a few years ago.

This new law requires public authorities like yours to be proactive in ensuring that disabling barriers are removed and that what you do promotes equality for disabled people.

This duty is not about changes to buildings or adjustments for individuals. Other parts of the Disability Discrimination Act deal with these things. It’s about addressing barriers within systems and weaving equality for disabled people into the culture of public authorities in practical ways. This means involving disabled people, including those with long-term health conditions, in policy development and actions from the outset, rather than focusing on individualised responses to particular individuals. It is about planning for equality at the beginning, rather than trying to add it at the end.

Complying with the duty should not only improve your performance on disability equality but will also help you to meet your wider objectives and strategic priorities.

Bert Massie  
DRC Chairman

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## **About this guidance**

### **What does this guidance do?**

This guidance explains how the Disability Equality Duty (DED) will apply to the employment policy and practice of public authorities.

### **Who needs to read this guidance?**

This guidance is designed to inform people in many roles in public authorities about the duty as it relates to employment:

- chairs
- board members
- non-executive directors
- chief executives
- senior managers
- human resource managers
- ICT and finance directors
- occupational health and health and safety advisors
- organisational development departments
- line managers and team leaders
- equality and diversity managers
- all employees
- disabled employees and disabled job applicants
- trade union representatives

All public authorities have a duty to implement disability equality in their role as employers, including local authorities, the health and social care sectors and the education sector. This guidance is a tool to help you:

- identify your duties
- develop good practice in carrying out those duties
- understand the implications for all aspects of employment.

Following this guidance will help you develop pro-active measures and, where required, produce a Disability Equality Scheme (DES) to meet the general and specific duties. Each section concludes with a summary of key points which you may wish to include in your DES.

The Disability Equality Duty requires public authorities to remove barriers likely to have a negative impact on disabled people, including those with long term health conditions. This guidance covers seven aspects of employment policy and practice:

- leadership
- culture
- data collection and monitoring
- recruitment
- training
- retention
- career progression and promotion

For more detailed information, please refer to the Disability Right Commission's (DRC) Codes of Practice on the Disability Equality

Duty.<sup>1</sup> Other information can also be found on the DRC website [www.dotheduty.org](http://www.dotheduty.org).

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<sup>1</sup> Disability Rights Commission (2005) 'Statutory Code of Practice, the Duty to Promote Disability Equality: Statutory Code of Practice England and Wales', or the equivalent code for Scotland, [www.drc.org.uk/employers\\_and\\_service\\_provider/disability\\_equality\\_duty/getting\\_started/codes\\_of\\_practice.aspx](http://www.drc.org.uk/employers_and_service_provider/disability_equality_duty/getting_started/codes_of_practice.aspx)

# **The Disability Equality Duty and employment**

## **More than ramps and lifts**

The Disability Equality Duty requires public authorities to move beyond a concept of disability equality being only about the removal of physical obstructions. The duty is about moving towards an understanding of the hidden and often unintentional barriers, which keep disabled people from making a full contribution, in this context as employees, to the management and delivery of public services.

The Prime Minister's Strategy Unit report 'Improving the life chances of disabled people' demonstrates that in all areas of life, disabled people, including those with long-term health conditions, face significant institutional discrimination.<sup>2</sup> In employment, the situation is stark.

According to the DRC briefing in 2006 there are 6.8 million disabled people of working age in Britain, but only half are in work, compared with four fifths of the non-disabled population.<sup>3</sup> Employment rates vary greatly according to the type of impairment a person has. Disabled people with mental health problems have the lowest employment rates of all impairment categories, at only 20 per cent.<sup>4</sup>

The Department for Work and Pensions' survey, 'Disabled for Life?' found that disabled people frequently believed they had encountered prejudice in the application process, and many people (46 per cent) believed that employers were not as likely to employ people with impairments as people without them.<sup>5</sup> Less than three-fifths of people always told potential employers about their impairment or long-term health condition.<sup>6</sup> Furthermore, 17 per

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<sup>2</sup> Prime Minister's Strategy Unit (2005), 'Improving the Life Chances of Disabled People', Cabinet Office, London

<sup>3</sup> DRC (2006) 'DRC Briefing', DRC

<sup>4</sup> See footnote above

<sup>5</sup> Department for Work and Pensions (2002) 'Disabled for Life?', [www.dwp.gov.uk/asd/asd5/173summ.asp](http://www.dwp.gov.uk/asd/asd5/173summ.asp)

<sup>6</sup> See footnote above

cent of disabled people said they had experienced actual discrimination in the workplace because of their disability.<sup>7</sup>

The bleak overall statistics conceal the even worse reality that for many groups of disabled people unemployment rates are higher still. For example once in work people with mental health problems are at more than double the risk of losing their job.<sup>8</sup>

It is important to recognise that the statistics relating to employment disadvantage faced by disabled people relates not only to the lack of reasonable adjustments for individuals. Crucially these statistics reflect an employment environment, which for a variety of reasons, including the design and delivery of employment policy, does not effectively promote equality for disabled people.

## **The social model of disability**

The success of any actions taken to deal with or remove the disadvantage experienced by disabled people depends on what is believed to be the cause of the disadvantage.

For many years some organisations have based their approach to disability issues on the medical model of disability which ascribes the disadvantage and exclusion which disabled people experience to their impairment or medical condition.

The DRC takes the view that public bodies will be most effective if they base their actions on the social model of disability. This means that disability is considered to be caused by 'barriers' or elements of social organisation which take no or little account of people who have impairments or long term health conditions. Thus it is not someone's impairment or medical condition which causes disadvantage, but rather attitudinal and environmental barriers.

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<sup>7</sup> See footnote above

<sup>8</sup> Burchardt (2003) 'Employment retention and the onset of sickness or Disability', Department for Work and Pensions in-house report no.109

## **What is the overall aim of the Disability Equality Duty and when does it come into effect?**

The Disability Equality Duty is a new legislative requirement placed on public authorities. It is a practical tool to deliver better disability equality outcomes, The DED is not about changing the world overnight, rather it is about determining, with the involvement of disabled people, those practical measures that will promote better life chances for disabled people.

The DED requires public authorities to act proactively on disability equality issues. You will need to identify from the beginning, if your organisation is operating in a way which does not promote disability equality. This is not just about identifying physical/sensory barriers, but considering barriers to equality created by the way services, policies or practices are designed and implemented.

This duty is therefore aimed at tackling institutional disability-related discrimination. This is a really exciting step forward and compliments the individual rights focus of the Disability Discrimination Act (DDA). It is not about more individual rights; instead it is about improving public authorities' policies and services as a whole for all disabled people.

The general duty came into force on 4 December 2006, by when all public authorities should have been prepared.

Those public authorities who are subject to the specific duties, apart from a couple of exceptions set out below, must have published their Disability Equality Schemes by 4 December 2006

Primary schools in England have until 3 December 2007 to publish their Disability Equality Schemes. All schools in Wales must have published their Schemes no later than 1 April 2007.

The duty applies in England, Scotland and Wales. The duty in England and Wales is in all key respects the same as the duty which applies in Scotland, except there are different arrangements in relation to education due to differences in other legislation.

**More information can be found in the DRC Codes of Practices.**

# **An overview of the Disability Equality Duty**

## **The general duty**

The duty to promote disability equality applies to all public authorities (with a handful of specialised exceptions). This therefore covers a wide range of organisations including:

- local authorities
- government departments
- health organisations
- education bodies
- universities
- housing associations
- inspection bodies
- police authorities.

It will also apply to any authority (including in the private sector) which exercises some functions of a public nature. Further details can be found in the DRC Codes of Practice and the DRC Overview Guidance.<sup>9</sup>

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<sup>9</sup> DRC (2005) 'Doing the duty: An overview of the Disability Equality Duty for the public sector', [www.drc.org.uk/employers\\_and\\_service\\_provider/disability\\_equality\\_duty/getting\\_started/doing\\_the\\_duty.aspx](http://www.drc.org.uk/employers_and_service_provider/disability_equality_duty/getting_started/doing_the_duty.aspx)

## **What is the general duty?**

The general duty places a duty on all public authorities, when carrying out their functions, to have due regard to six key issues:

### **The need to promote equality of opportunity between disabled people and other people**

This is the over-arching goal of the duty. All public authorities will need to have due regard to the need to promote equality of opportunity between disabled and non-disabled people, based on a recognition that disabled people should have full opportunities and choices to fulfil their potential, improve the quality of their lives and be respected and included as members of society. This element of the duty, in common with all the other elements, is not about individual rights but is about considering how at an organisational level you can promote equality for disabled people.

Disability equality is likely to figure significantly in all aspects of employment policy and practice, including:

- recruitment
- induction
- training and organisational development
- promotion
- performance appraisal
- grievance and disciplinary
- employee relations.

A large university, through its work on the DED, becomes aware that the majority of staff who become disabled whilst in their employment are medically retired. This is not only failing to contribute to promoting disability equality but is also leading to the loss of experienced and highly trained staff. The university involves disabled employees in putting together a programme for appropriate adjustments, rehabilitation and where necessary redeployment of staff who become disabled with medical retirement only being considered as an absolute last resort. They provide appropriate training for managers and closely monitor this new programme.

### **Eliminate discrimination that is unlawful under the DDA**

The DDA places very specific legal responsibilities upon employers in relation to eliminating discrimination. Discrimination in relation to employment takes a variety of forms under the Disability Discrimination Act – one of the key of these being the failure to make adjustments. Whilst the duty to make adjustments in relation to employment is owed to an individual disabled employee or applicant, and is owed only when an employer knows or ought reasonably to be expected to know that that individual is disabled and likely to be affected in a particular way in the recruitment process or workplace, the DED requires employers to consider their employment policies and the duty to make adjustments in a more proactive way – so that discrimination may be eliminated prior to its arising.

The DED provides an opportunity for an organisational review of compliance with this legislation including the organisation's policy on reasonable adjustments. The DRC has provided specific guidance on employment good practice, reasonable adjustments and the DED which can be found on the DRC website, [www.dotheduty.org](http://www.dotheduty.org).

A hospital is aware through its recruitment data that about 3 per cent of its employees consider themselves to have a disability but they have no further information. They do not monitor employee requests for reasonable adjustments under the DDA across the organisation.

They are not aware of which employees these are. Managers have received training in disability equality but they do not have records which are organisational wide of employee's requests for reasonable adjustments under the DDA.

When they are working on the Disability Equality Duty the lack of any further data including around reasonable adjustments makes it very difficult for them to assess either their performance on disability equality or to identify particular issues. As well as addressing this huge data gap the hospital trust decides to develop, as one of their key actions, a reasonable adjustment policy and procedure in order to ensure that managers are proactively identifying employees who may require adjustments and that there is an efficient system for employees who request adjustments. This system is then monitored.

### **Eliminate harassment of disabled persons that is related to their disabilities.**

Harassment has not been an issue which many employers have considered in relation to disability, but local and national evidence tells us that this is a significant issue for many disabled people. The DED provides an opportunity for public authorities to focus on this important area and to ensure they are effectively tackling the serious problem. This may be through a range of mechanisms including gathering information, developing actions and reviewing current anti-harassment policies to ensure these are effective for disabled people.

The DRC recommends that public authorities develop anti-harassment policies covering disability in agreement with employees. The outcomes of this policy need to be assessed regularly to find out what difference it has made.

A Registered Social Landlord is aware that they are covered by the general duty. When they are considering the element of the duty around eliminating harassment they look at their current performance on harassment particularly around race and gender. They have strong data in relation to these areas and a robust harassment policy which has in the last year led to proceedings against tenants for harassment. The policy does not address disability but by trawling compliance and housing officer case files they discover several instances of disabled tenants complaining about harassment during the last year but the usual action was a letter to the alleged perpetrators.

They decide to immediately develop an equivalent policy on disability to that on race and gender and to both publicise and monitor this policy. They also contact the disabled tenants who complained about harassment previously to see whether any further action is required.

### **Promote positive attitudes towards disabled persons**

When employing disabled people, public authorities should consider what they can do to eliminate ignorance and prejudice within their own organisation in the wider community. Social model based disability equality training will help ensure that employees play their part in treating disabled people with respect and equality of opportunity, as will developing positive profiles of disabled staff throughout the workplace.

Another important element will be ensuring that positive images of and attitudes in relation to disabled people and disability are utilised within internal and external communications.

A government department is putting together a video for college recruitment fairs about the benefits of working for the department. They are featuring real employees within this video. As part of their work on disability equality they ensure that disabled employees are featured positively within the video.

## **Encourage participation by disabled persons in public life**

The DED focuses on encouraging participation by disabled people in public life because disabled people are significantly under-represented in this important area. In some cases this participation will be within forums, groups or committees within the organisation, and it is important that disabled people have confidence in these situations being completely inclusive and welcoming of disabled people. In other cases this will be about participating in public life outside of the organisation, everything from tenants' association representatives to government public appointments.

When looking at how to have due regard to this, employers should be aware that they can have a significant role in addressing this by supporting disabled employees who wish to take public office over and above their work commitments.

Appropriate actions to encourage such participation could include ensuring that there are policies in place on arrangements for employees to take up public office to promote disability equality, ensuring that these arrangements do effectively encourage disabled people and encouraging disabled people to take up these opportunities. Once such policies are in place, disabled people will need to be aware of information about the organisations agreed arrangements for time off or flexible working, and managers will need to recognise the benefits and encourage the participation of disabled people.

A local authority HR, through its work on the DED, has been monitoring how many disabled people are requesting time off under the organisations scheme to undertake civic responsibilities, such as being involved in the management of voluntary organisations or on the boards of health bodies. This monitoring shows that in comparison with the general workforce very few disabled people are taking up this opportunity. The HR department undertakes a series of actions to improve this situation by publicising the arrangements for taking time off through the disabled staff network and offering disabled staff support in negotiating adjustments with any public body they have the opportunity to participate in.

## **The need to take steps to take account of disabled persons' disabilities, even where that involves treating disabled persons more favourably than other persons**

The sixth, and final, requirement of the general duty represents the underpinning principle of the duty as a whole, taking extra steps to make sure public authorities are meeting the needs of disabled people in as effective a way as possible. Equality of opportunity cannot always be achieved simply by treating disabled and non-disabled people alike. Public authorities have to use a specific approach to make sure they are really addressing inequality and some of those outcome gaps mentioned earlier in this guidance.

In a police authority a disabled employee needs a dedicated car parking space because the public transport infrastructure is inaccessible to her. Non-disabled employees also want a parking space close to the workplace, but will not experience the same degree of disadvantage if they do not get one. The disabled employee may be prevented from doing her job if she does not have the space, whilst a non-disabled employee will merely be inconvenienced. More favourable treatment is necessary to provide equality of access to and in the workplace.

This principle has always been recognised in the DDA, particularly through the duty to make reasonable adjustments. The police authority in the above example will have a duty under the Act to provide the parking space if, in all the circumstances, it is a reasonable adjustment to make. Unlike other anti-discrimination laws, the Act does not prohibit or restrict positive discrimination in favour of disabled people in any way. This is because under the DDA only disabled people are protected against discrimination, and not those who are not disabled. This was reflected in particular in the case of *Archibald v Fife*.<sup>10</sup> In this case the House of Lords, in relation to an employee who was dismissed by a public authority, said that the reasonable adjustment provisions of the DDA required more favourable treatment of disabled people in some circumstances.

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<sup>10</sup> *Archibald v Fife Council*, House of Lords (2004) IRLR 651

## **What does due regard actually mean?**

Due regard means that authorities should give due weight to the need to promote disability equality in proportion to its relevance. It is a legally reinforced opportunity to consider how any particular aspect of employment might achieve equality for, and effectiveness of, disabled employees.

## **What aspects of a public authority's work are subject to the duty?**

The duty applies to both employment and service delivery (as well as the provision of education). However, much of the focus of work within public authorities on disability equality and employment has looked at recruitment. Within this duty public authorities need to look beyond this and should also consider issues around development and retention of disabled employees.

This may mean consideration of policy and other aspects of the employment environment including:

- induction
- career development
- appraisal
- training
- management systems
- absence management
- payroll systems
- occupational health
- disciplinary procedures
- and almost every other area of employment.

Within all of these areas the most effective approach is to consider all of the six elements of the duty laid out above to see how the employment work of the organisation can pay due regard to the elements.

## **Procurement and partnerships**

Participating in partnerships with other authorities, and procuring goods and services are both functions to which the general duty applies, where it will be vital to give due regard to disability equality.

The DRC has produced guidance and information on procurement and the Disability Equality Duty which is available at [www.dotheduty.org](http://www.dotheduty.org).

## **The specific duties**

Many public authorities are subject not only to the general duty but also have a set of specific duties which are designed to help them effectively meet the overall general duty. At the heart of this is the Disability Equality Scheme.

These specific duties apply to a very large number of public authorities including:

- universities
- colleges
- local authorities
- government departments
- health bodies
- police authorities
- fire authorities
- inspection bodies.

It also applies to schools in England & Wales and to schools in Scotland in an indirect way. There is more information on the specific duties and a complete list of authorities to which they apply to in the DRC Codes of Practice.

The DRC would recommend that those organisations who are subject to the general duty but not the specific duties, for example a privately run prison or a registered social landlord should consider utilising the framework of the specific duties in order to meet their general duty, as this is the most effective, and structured, way of meeting it.

## **What is required by the specific duties?**

The specific duties give a clear framework in order to help public authorities have due regard to the six elements of the general duty. This framework centres around the Disability Equality Scheme.

Public authorities need to develop their DES and involve disabled people in that development. The key elements that the Disability Equality Scheme must include are:

- a statement of how disabled people have been involved in developing the scheme
- the Action Plan
- arrangements for gathering information about performance of the public body on disability equality
- arrangements for assessing the impact of the activities of the authority on disability equality and improving these when necessary
- details of how the authority is going to use the information gathered, in particular in reviewing the effectiveness of its Action Plan and preparing subsequent schemes.

Public authorities will also be required to publish information annually on their progress in relation to their Scheme and Action Plan and to review the Scheme at least every three years.

The Disability Equality Scheme is simply the mechanism by which the general duty can be effectively delivered and developing the Scheme is simply the beginning of the work of the organisation on the general duty.

Most organisations who are producing a DES will do this for the whole organisation and whilst employment is obviously central the Scheme is likely to cover a wide range of functions. However, those responsible for employment will need to ensure that the scheme is highly relevant to employment issues and will provide an

appropriate structure to make significant progress on disability equality within employment.

Whilst a large public authority may produce an overarching Scheme for all its departments and functions, the DRC strongly recommends that each individual department including Human Resources considers its own evidence base and draws up its own Action Plan to feed into any corporate schemes.

## **Where to start?**

At first glance the duty can appear a bit daunting! However, if public authorities and HR departments focus on what outcomes they want to achieve with this duty and break this down into manageable stages, then it's actually very straightforward. An authority needs to consider what success will look like in relation to this duty, their particular responsibilities and how they will know they're making progress.

## **Involving disabled people**

The most effective place to start in addressing the general duty, developing a DES and an Action Plan is with involving disabled people.

Involving disabled people from the outset is not only a requirement of the specific duty but will also bring tremendous benefit in terms of developing expertise to the authority, including in relation to employment. However, in many cases it will be a challenge both for the public authority and for disabled people to ensure the involvement is targeted and effective. It is essential that disabled staff are involved particularly in developing work on disability equality and employment.

Involvement should not be confused with consultation. The duty will require a much more active engagement of stakeholders at all stages. You will need to budget appropriately to ensure that access requirements are fully incorporated. When drawing up strategies for involvement ensure you also include employees with mental health issues, learning disabilities and long term health conditions such as diabetes, cancer and depression, as well as the more

**‘conventional’ understanding of disabled people. Details on the full definition of disability under the DDA can be found on the DRC website [www.drc-gb.org](http://www.drc-gb.org).**

**There will be a range of ways of involving disabled employees. For example, through staff groups, trade unions or other networks. You may wish to consider supporting the development of a specific disabled staff network and also look at ways of involving disabled people from the wider community who may be potential employees.**

**A large university decides in order to support the development of its DES, to help facilitate the development of a disabled staff group. The Vice-Chancellor publicly supports this development, as does the trade union. A member of the HR team is seconded on a part-time basis to develop this group and they are supported by staff in other departments including communications. A publicity campaign is undertaken to seek participants. Fully accessible meetings, social events, and an interactive section of the intranet are put together to bring together a wide range of disabled people who may wish to be involved.**

**In order to ensure that involvement is both effective and positive it is important to make the involvement targeted, efficient and transparent. Focusing this involvement initially on developing the scheme, identifying barriers and priorities and looking at planning actions helped to ensure this involvement leads to practical outcomes.**

**At the same university when the group is formed, with almost 30 participants, it becomes involved in identifying key areas of work on disability equality particularly around employment. Specific meetings are held with the Head of HR to inform the employment Action Plan. The disabled staff group identify issues around management training, the role of the occupational health service and the slow provision of reasonable adjustments. Actions and targets relating to these are built into the Action Plan alongside some of the priorities identified by the HR department through the process of gathering evidence.**

**You need to ensure that this involvement is properly facilitated for employees not only by ensuring that it is inclusive and accessible**

but also that this involvement happens in a structured way during working hours and is valued at a managerial level as part of the employees' contribution to the development of the organisation.

Whilst the specific duties require involvement of disabled people in the development of the Disability Equality Schemes, it would enhance an authority's ability to comply with the duty to also consider involving disabled people in other related tasks such as impact assessments and information gathering to truly realise improved disability equality outcomes. The DRC has produced guidance on involving disabled people.<sup>11</sup>

In the university example above fully accessible meetings are facilitated during working time and participation in the group is included in the objectives for the relevant staff. The university makes a commitment to supporting the long-term development of the group and involving disabled people in monitoring the work on disability equality.

More information and guidance for public authorities on involving disabled people and their authorities to support this process can be found on the DRC website [www.dotheduty.org](http://www.dotheduty.org).

## **Gathering information**

It is essential for a public authority to have some idea of how they are currently performing on disability equality to inform their Disability Equality Scheme. Mapping current performance areas for improvement can help identify further actions. The specific duties require authorities to set out its arrangements for gathering information on the effect of its policies and practices on disabled people, and in relation to employment, in particular its effect on the recruitment development and retention of disabled employees. It must also set out arrangements for making use of the information to assist in meeting its general duty, reviewing the effectiveness of its Action Plan and for preparing subsequent schemes.

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<sup>11</sup> See: DRC (2006) 'The Disability Equality Duty and involvement: Guidance for public authorities on how to effectively involve disabled people', [www.drc.org.uk/employers\\_and\\_service\\_provider/disability\\_equality\\_duty/getting\\_started/involving\\_disabled\\_people.aspx](http://www.drc.org.uk/employers_and_service_provider/disability_equality_duty/getting_started/involving_disabled_people.aspx)

This mapping is not an end in itself, but is merely there to help the authority make decisions about what actions would best improve disability equality. The information will help assess performance by identifying areas where they are doing well on promoting disability equality and areas where their performance is not so good. It needs to be detailed enough to enable the authority to measure their delivery on disability equality and to assess their performance and priorities. Often information will show up a particular pattern, trend or experience and this should act as a trigger to investigate further.

Employment information about disabled employees has often focused purely on recruitment and has simply provided statistical information about the number of people who consider themselves to be disabled who have applied for or been successful in getting jobs. This kind of information, whilst useful, provides a very limited picture and a much wider range of information which covers recruitment, retention and development is required. In order to be effective information to inform a range of actions on employment is very important.

A local authority has been systematically collecting information for several years on whether applicants for jobs consider themselves to have a disability and the number of these who are successful. By collating this information they have gradually built up a picture of the number of disabled people in employment and they report on these figures annually.

When they are developing their DES they realise that they have no information about the grade or level of disabled employees or about how successful they are in gaining promotion. They also have no information about key areas such as appraisal scores, training, absence or even why disabled people leave the employment of the authority. This makes identifying issues for disabled people and potential actions very difficult.

Much of the information required to identify issues and required actions can simply be obtained by disaggregating current information or introducing additional sections within monitoring systems to cover disability. For example, could the feedback forms for training sessions be disaggregated to identify the views and take-up of disabled people on training sessions?

It is also vital to have a wide range of information about disabled people rather than just bland numbers of those who consider themselves to be disabled. Drilling down into this information in relation to both impairment and barriers faced is really helpful in informing actions to promote disability equality. A range of suggested monitoring questions are contained within the DRC guidance on evidence gathering.<sup>12</sup>

The same local authorities do have a very wide range of information about female employees and those from BME communities and systems in place for capturing this data. They are about to undertake their annual staff survey and decide to ensure that information is gathered in this survey relating to disability so that this can be disaggregated. There will also be a section where disabled people can identify specific barriers to equality.

In addition, they will look at how other key mechanisms such as appraisals and training forms can be used to obtain information about disabled employees and how through this they can identify if there are unequal outcomes for specific groups of disabled people.

Many public authorities have expressed concerns about the reticence of some disabled people to declare they have a disability. In addition, some people who are covered by the DDA do not view themselves as disabled. Reassurances about confidentiality, information about what is meant by a disability, and confidence that the information will inform effective actions are likely to increase the willingness of disabled people to disclose their disability and hopefully to also become involved in the work of the organisation in promoting disability equality.

Anyone designing a system within an authority to gather information should be considering how the authority is going to make use of the information, particularly when monitoring according to impairment type. There is no point collecting information if you have no intention of making use of it.

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<sup>12</sup> DRC (2006) 'Guidance on gathering and analysing evidence to inform action', [www.drc.org.uk/employers\\_and\\_service\\_provider/disability\\_equality\\_duty/getting\\_started/evidence\\_gathering.aspx](http://www.drc.org.uk/employers_and_service_provider/disability_equality_duty/getting_started/evidence_gathering.aspx)

The local authority in the examples above carefully plans exactly what they will do with the information from the staff survey and highlights this in the survey itself. This includes producing a report on the barriers which disabled people have identified; including these within the disability equality Action Plan, and ensuring that mechanisms are in place to begin to address any key patterns of inequality in take-up or outcome for disabled employees.

In the employment setting it is also very important to remember that a significant number of your disabled employees will have become disabled whilst in your employment. So even the numbers of disabled people will be constantly changing and there will be very specific issues for people who have become disabled.

Gathering information is obviously essential, but even more important is utilising this information to inform the actions of your department and organisation of disability equality and in relation to the elements of the duty. Gathering information for its own sake will not help to effectively promote disability equality.

Gathering information is an ongoing process and only having a limited amount of information is not an excuse for inaction. Further information can be located in the guidance on gathering evidence.

## **The Action Plan**

The specific duties require what is known as the Action Plan to be set out in your Disability Equality Scheme. The Action Plan sets out the steps that a public authority is going to take to meet the general duty. It will set out the key actions that the authority will take to promote disability equality over the period of the DES. The steps set out must be taken by the authority, unless it becomes impracticable or unreasonable to do so (this is likely to be very rare).

The DRC recommends setting out in the Action Plan specific targets on the employment of disabled people against which an authority/you can readily measure its/performance. Schemes are unlikely to be able to address all areas of concern to disabled people in the first three years and priorities will need to be considered. Disabled employees should be involved in deciding those priorities.

This means that efforts should be concentrated on those areas that will have the maximum impact on disabled people's lives.

The Action Plan should be aimed at making practical improvements to equality for disabled people and that is why the specific outcomes must be clearly identified.

Whilst it is essential that disabled people are involved in developing these actions it is also critical that key officers within the HR department are fully involved in this process. These actions need to be realistic, focused and achievable and all elements of the DED should be covered within these including:

- eliminating harassment
- promoting positive attitudes
- encouraging participation in public life
- promoting equality
- eliminating unlawful discrimination.

The DRC would strongly recommend that clear targets are set in key areas of employment.

A small NHS trust/board has successfully developed a disabled staff network and gathered some basic information about the employment experience in the trust/board.

It has become clear that whilst the trust/board has a relatively high number of disabled staff these are mainly concentrated in administrative grades. Also the take-up of training by the staff is very low and disabled staff have raised concerns that external training courses on management skills are often not accessible.

As one of the actions within its Action Plan the HR department decide to run a series of management training sessions for administrative staff in-house. They reserve a number of places for disabled staff, ensure that the events are totally inclusive and that the trainer is experienced in disability equality issues. Other actions

are put in place to try to encourage and support disabled people to get into management positions.

Within the HR department clear targets are set for the number of disabled people they wish to see in management positions within two years and the numbers of disabled people applying for and being successful in seeking promotion are carefully monitored.

## **Impact assessment**

Public authorities must include in their DES details of their methods for assessing the impact (or likely impact) of their policies and practices on equality for disabled people.

The purpose of impact assessments is to ensure that authority's activities do not disadvantage disabled people and to identify where they can best promote equality of opportunity.

Where an assessment identifies a negative impact or missed opportunity to achieve a more positive impact, the authority should look at what it can do to remedy this and to take up this missed opportunity.

Within employment there will clearly be a large number of policies and protocols ranging from recruitment policies through to absent management mechanisms. The majority of these will be very relevant for disabled people and so over time should be considered for a disability equality impact assessment. A system to ensure careful prioritisation and a clear timetable will be required to ensure that all relevant areas can be carefully considered and actions formulated to either mitigate any negative impact or to maximise any missed opportunities.

The HR department of a district council is considering how it can most effectively undertake impact assessments in relation to disability equality of the large number of employment policies which they have in place. Initially they identify what all these policies are and then, with the involvement of disabled people, prioritise these and develop a timetable for undertaking impact assessments.

In the meantime they identify concerns with their own skill level in undertaking these assessments and decide to ensure that a senior member of the team is fully trained in disability equality impact assessments and is able to run in-house briefing sessions and support other managers within the HR department. Following the training a series of questions are drawn up for managers to use when doing the impact assessments and a system devised for reporting on proposed changes/improvements and taking these forward.

One of the first policies which they impact assess from the 'back catalogue' relates to support the council offers for staff who wish to take-up public appointments or specific civil responsibilities such as school governors or health board members. Disabled people have raised concerns about this, evidence has shown that very few disabled people in the council's employment have requested support and the DED specifically expects public bodies to pay due regard to encouraging participation of public life.

The impact assessment reveals that only staff who have been with the council for three years are given paid time for civic responsibilities and this is not available to newer staff. Many disabled staff are relatively new following a recruitment campaign the previous year. Therefore this policy is having a disproportionate impact on disabled staff. The HR department decides to ensure that all staff have the same right to time off and they also have discussions with the governing body unit within the children's directorate to see whether they can find ways to try and recruit more disabled employees as school governors as there currently are a significant number of vacancies.

At the same time any new policies will also need to be considered for an impact assessment. In order to be effective, impact should be considered at the beginning of any policy, and then throughout its development. It will not be effective if the impact assessment is just 'tagged on' at the end. Involving disabled people in impact assessing key policies can be very useful and is something that the DRC would recommend.

The district council is also beginning to develop a new policy on hot desking and the HR department is closely involved with this. With increasing staff numbers and reducing office space this is a key area for the council. Previously no consideration has been given to issues for disabled people but through undertaking an initial impact assessment and utilising the questions developed by HR, it becomes clear that the plans could have a serious negative impact on disabled people particularly those who have assistive technology or other adjustments such as particular furniture or the need to be in a specific locations such as near a window for natural light.

Consideration is given to various ways of mitigating this impact whilst still meeting the overall goal of reducing desk space. A decision is made to continue with hot desking but to reduce the targets in relation to the number of desks which will be lost in order to ensure that disabled people who require this can maintain a fixed workstation.

As well as formal impact assessments of policies the HR department will be key in helping the organisation decide how they will ensure that disability equality is considered in more operational day-to-day decisions. These are often taken, in relation to employment and other areas, by middle managers and therefore the HR department may be able to offer advice on training and other positive initiatives.

Further information and guidance on disability equality impact assessments can be found at [www.drc.org.uk/employers and service provider/disability equality\\_duty/getting\\_started/impact\\_assessments.aspx](http://www.drc.org.uk/employers_and_service_provider/disability_equality_duty/getting_started/impact_assessments.aspx).

### **External inspection**

Inspection authorities will be building the DED into their assessments of effectiveness wherever possible and reporting on performance as they themselves are subject to the Disability Equality Duty. This can help make the duty work effectively as inspection authorities will be expected to assess the performance of public authorities to ensure that they are doing what they should in respect of disability equality.

In developing their own DES, inspection authorities should consider what targets and performance indicators would produce meaningful measurement of improvement in relation to the employment of disabled people in their sector.

For example, their audits could track the occurrence of formal proceedings taken by disabled employees under disability-specific and other discrimination legislation. This would require public authorities to monitor multiple discriminations, for example as experienced by disabled people from black and minority ethnic communities, disabled women or older disabled workers. Similar monitoring arrangements should include recruitment, disciplinary and bullying and harassment procedures.

### **Procurement and commissioning**

Procuring or commissioning goods or services is an essential area for consideration in relation to the duty and promoting disability equality. It is essential that consideration is given to procurement arrangements, including contracts, to ensure that these are supporting the public authority in meeting the duty. This can be particularly important for those working on employment issues. The DRC recommends that careful consideration is given to this issue and that the detailed advice in the DRC guidance on procurement is closely followed.<sup>13</sup>

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<sup>13</sup> DRC guidance and information on procurement and the DED can be found at [www.dotheduty.org](http://www.dotheduty.org)

## **Only the beginning...**

Once the Scheme is written and approved it will need to be published, but that is only the beginning.

The core of the work is:

- taking forward the actions
- improving the performance of the authority through the outcomes of impact assessments
- building up the information base about performance on disability equality
- actually improving the employment prospects and the employment experience of disabled people.

When those improvements have made an impact, the number of disabled people being promoted increases, the average appraisal score of disabled people goes up, there is an increase in positive feedback about training from disabled people, issues around harassment are dealt with in a quicker and more efficient manner or you simply have more disabled employees that value and celebrate this progress. This is your significant contribution to closing the huge gaps for disabled people.

The Scheme can last for up to three years and it should be regularly reviewed. Information gathered to review the effectiveness of the Action Plan will help prepare subsequent schemes. Public authorities should report annually on progress and be aware that organisations like inspection bodies will be looking at progress, as will disabled people.

## **What sanctions are there for failure to do the duty?**

If a public authority does not comply with the general duty this may, depending on the circumstances, be the subject of a claim to the High Court or Court of Session for judicial review by anyone with sufficient interest in the matter, or by the Disability Rights

**Commission (DRC) or its successor body, the Commission for Equality and Human Rights (CEHR).**

**If a public authority does not comply with its specific duties, it could face action by the DRC or CEHR in the form of a compliance notice which can be enforced in the county or sheriff court.**

## **Disclaimer**

**The information in this guidance is based on the law but its main purpose is to help authorities to comply with and make the most of the Disability Equality Duty. The Statutory Code of Practice on the Disability Equality Duty provides further detail of the legislation.**