Employment for Disabled People social obligation or individual responsibility?

Patricia Thornton and Neil Lunt

Preface

Our interest in policies for the employment of disabled people was first stimulated by a commission from the Employment Department to review policies and services in 15 countries. Our thinking was further informed by an invitation to contribute an overview of UK policy at an international expert meeting in December 1994, organised by the European Centre for Social Welfare Policy and Research and the Austrian Ministry of Social Affairs. While we are grateful to those bodies for supporting our earlier work, the views expressed here are ours alone

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Chapter One

Introduction

Over the last five decades, the principle which underpins policy for the employment of disabled people has remained constant - the majority of disabled people are fully employable on their own merits in competition with non-disabled workers, providing that prejudice and discrimination are overcome. However, the mechanisms by which that principle is put into practice have altered radically in the 50 years since the Disabled Persons (Employment) Act 1944[1] came into effect. A social obligation - at one time discharged by government - to oversee the translation of the principle into practice, and to monitor its effects, has given way to individual responsibility for action and to self-policing. In short, responsibility for achieving a fair share of employment for disabled people has passed from the state to the individual.

Disability discrimination legislation represents a watershed in UK policy. With the repeal of much of the 1944 Act, there will be no legislative duty on employers to ensure that disabled people are fairly represented in their workforce, no mechanism for enforcing any such obligation and no penalties for breaking the law. Rather, employers will have a duty to ensure that they do not discriminate against a particular disabled applicant or employee. Despite gaining a new personal right not to be discriminated against, the individual must prove his or her case and the wrongful employer pay no penalties other than any agreed compensation to the individual.

The recent Government consultation paper, White Paper and Bill aimed at reducing discrimination against disabled people (Disability Unit, 1994; Minister for Disabled People, 1995; Disability Discrimination Bill, 1995) have brought sharply into focus the dominance of individualistic rationales for change. A gradual trend in policy, away from collective obligation towards individual self-reliance, has been hastened by the Government's stance against interference in the labour market, and by its advocacy of supply-side solutions to economic difficulties. At the same time, a strong disabled people's movement has argued against patronage policies, challenging the dominant view that disabled people 'need' care and 'deserve' special provision. The Independent Living Movement has campaigned for individual rights to self-determination. The crusade for 'civil rights' has helped justify the retreat from policies of social obligation and the dismantling of practices which, in theory at least, protected the collective employment position of disabled people.

Can anti-discrimination legislation alone ensure equity in the labour market for all disabled people? Can the exercise of individual rights, in a framework of individual competition, so affect employment practices that disabled people gain a fair share of employment opportunities? Is there no longer a role for government to protect the employment rights of disabled people as a

whole, through policies of obligation which recognise and try to redress the structural disadvantage disabled people face in the labour market?

To understand how policy has become rooted in individualism, in this paper we will look at the evolution of disability employment policy in the UK[2] in the post-war years. We will examine alternative policy approaches - both collective and individualistic - drawing on recent developments in Europe, Australia and North America, and consider their application to the UK. First, we address in more detail the structural disadvantages disabled people face, the agendas for the disability movement and the economic and political agendas.

Unemployment, underemployment and society

Two distinct points can be made about the disadvantages disabled people face in participating in employment. First, the *level* of unemployment is higher. Although estimates of employment and unemployment among disabled people vary, depending on definitions and measures used, they all confirm that disabled people are up to three times more likely to be unemployed (Prescott-Clarke, 1990; Berthoud *et al*., 1993). There is also ample evidence that disabled people would like to have paid work. Prescott-Clarke (1990) found that 22 per cent of 'occupationally handicapped' but economically active men and women 'wanted work'. These rates were almost twice as high as those for economically active men and women in the general population.

Secondly, disabled people are disadvantaged in the *type* of participation in the labour force by underemployment - 'poorly paid, low-skilled, low-status jobs which are both unrewarding and undemanding' (Barnes, 1991, p.65). Research shows that disabled men can expect a fall in earnings of about a quarter, depending on the severity of their impairment, compared with non-disabled men with otherwise similar characteristics (Berthoud *et al*., 1993). Further dimensions of underemployment include lack of career advancement and the under-utilization of disabled people's skills and training once in employment. Disabled workers are more likely to be in low status, unskilled jobs: 12 per cent are in professional or managerial positions compared to 21 per cent of non-disabled workers, whilst 31 per cent are in low-skilled manual occupations, compared to 21 per cent of non-disabled workers (RADAR, 1993). Furthermore, one local survey found that 28 per cent of respondents thought that their chances of promotion were affected by their disability (RADAR, 1993). Government oral evidence to the House of Commons Employment Committee (1994) inquiry into the operation of the Disabled Persons (Employment) Act 1944 confirms the lack of attention paid to underemployment.

Work and society

Given the priority society accords to paid work and the general structure of disadvantage marginal groups face when denied the opportunity to work, there is a clear social obligation to combat the high level of unemployment among disabled people. As Disabled People International recognises, 'disabled people are still the poorest of the poor in every country' (*Vancouver Declaration*, 1992). Employment, understood as paid work, remains the primary means by which a person's position is judged in relation to society. Despite pressure from the feminist movement and its influence on highlighting caring activities, and the somewhat partial recognition of this by policy makers, waged labour remains central both to an individual's social standing and to society's resource allocation.

Structural changes in the economy and moves towards more flexible forms of work and its organisation have failed to challenge many orthodox notions surrounding work. Major opportunities and activities remain rationed by employment. The suggestion that leisure would become increasingly significant towards the end of this century as unemployment remained high does not appear to have been fully realised. Indeed, the Titmuss (1958) concept of the social division of welfare remains important, with opportunities increasingly mediated through a person's employment.

The disabled people's movement and employment

Combining these two points - that disabled people are more likely to be disadvantaged in the labour market and that employment is both an important distributor of opportunities and a basis of mutual respect - suggests that employment policy will be of great interest to disabled people as they seek both to remove discrimination and to make the choices that have a bearing upon their own lives.

The rise of the disabled people's movement and struggles of the Independent Living Movement have been central to recent discussion of disability issues. There are differing interpretations of 'independent living' (Stuart and Seymour, 1994). Morris (1993) in her work notes four key assumptions that underlie the Independent Living Movement's position: that all human life is of value; that anyone, whatever the impairment, is capable of exerting choices; that people disabled by society's reaction to physical, intellectual and sensory impairment and to emotional distress have the right to assert control over their lives; and that disabled people have the right to participate fully in society. Following Morris, independent living thus must encompass the full range of human and civil rights, including a right to employment. Despite these key assumptions, discussion of the place of employment in independent living has been limited. This is perhaps explained by the movement's roots in disabled people's attempts to achieve an alternative to residential care. Initial emphasis has rested instead upon the role of personal assistance and social services, education and housing in enabling independent living.

A great deal of work has contested official definitions of disability which see the 'problem' as located in the individual - a view challenged by disabled proponents of the 'social model' of disability (see, for example, Oliver, 1990). The British Council of Organisations of Disabled People (BCODP), for example, believes that disability should be characterised as 'the loss or limitation of opportunities to take part in the mainstream of life of the community on an equal

level with others due to physical or social barriers'. Practices which facilitate employment, and the contribution of 'work' towards independent living as yet have not been addressed within the discourse of the social model of disability (Lunt and Thornton, 1994).

Detailed explicit comment and criticism of disability employment policy has been less common in the disability movement than in the low pay lobby (see, for example, Jordan, 1979; Lonsdale, 1981; Lonsdale and Walker, 1984; Lonsdale, 1985). Where it does exist, commentary has tended to be descriptive rather than analytical (see Barnes, 1991). There have been only limited attempts to build employment into the important theoretical debates in the last decade about the construction of disability (Oliver, 1990; Shakespeare, 1993; Swain *et al*., 1993). When there is discussion, it is often contained within a human rights or anti-discrimination framework (for example, Law Society, 1992; Bynoe, Oliver and Barnes, 1991).

With choice and control the guiding axioms of the Independent Living Movement, it seems likely that employment will gain a place in discussion. Admitting that employment has a role in discussions surrounding choice and control is not purposely to elevate the place of work, however. Simply, the point being made is that choice over one's life, if it is to be choice in the fullest sense, should include realistic choice over work opportunities, or at the very least some discussions around the concept.

The economic agenda

Economic and ideological factors have framed recent governments' responses to disability issues. Economic policy has seen a marked shift to supply-side responses, emphasising the role of uninhibited market mechanisms as 'solutions' to economic problems. The Government has sought to stimulate competition through clarifying market signals and to encourage greater enterprise through improving incentives (Dunn and Smith, 1994). Collective or legislative solutions are anathema to this process - government should intervene as little as possible in the economy and the labour market. Its aim should be the freeing-up of markets and the elimination of controls. A significant part of this has been the drive to 'deregulate' in an attempt to reduce the administrative burden faced by firms. In addition to the market philosophy, the ideology contains a significant moral thread. A dislike of 'big government' and a commitment to 'rolling back the frontiers of the state', as well as purely economic reasons, justify reducing intervention in people's lives.

The current position

The first comprehensive framework for the employment of disabled people was introduced by the Disabled Persons (Employment) Act 1944, which followed the recommendations of an inter-departmental committee (the Tomlinson Committee) on the rehabilitation of disabled people. The 1944 Act made provision for the setting-up of a disabled persons employment register; assessment, rehabilitation and training facilities; a specialised employment placement service; a duty on employers of 20 or more workers to employ a three per cent quota of registered

disabled people; protection against unfair dismissal of registered disabled people; designated employment; and a National Advisory Council and local Advisory Committees.

The Act, and in particular its provisions for compulsory employment, were subjected to repeated reviews. From 1973, the undisguised intention of governments and their agencies was to abolish the quota, universally recognised as unworkable. Campaigners, however, argued for the quota's retention in a strengthened form until an acceptable alternative became a credible option. Provision for a quota is now to be repealed, along with the register, protection against unfair dismissal and designated employment.

Despite the 1994 Act and its provision for compulsion, UK governments have preferred to pursue policies of persuasion and education. The UK policy position is encapsulated in the Government's response to the European Commission's Green Paper on European Social Policy:

> The most effective way to promote job opportunities for people with disabilities is to get employers to recognise the abilities of disabled people and the business case for employing them.
> (Employment Department, 1994a, Annex 2)

Employers are to change their attitudes, adopt good practice and willingly take on disabled employees, without legislative 'sticks' or financial 'carrots'. Enforcement of compulsory employment measures, such as the quota, would be regarded as an unwarranted intervention in the labour market and not in accord with overall labour market policies. The consequence was a policy vacuum with no sanctions imposed on employers who evaded the quota obligation and no alternative right to employment for disabled workers.

With the growth in public support for legislative alternatives following its blocking of a Private Member's Civil Rights Bill in 1994, the Government advanced new proposals for consultation - while still maintaining confidence in a long-term policy of education, persuasion and increased awareness, backed by practical help. The Government recognises that disabled people continue to encounter discrimination when seeking jobs but the main cause of discrimination is said to be 'ignorance, not ill-will'. In July 1994, a consultation document (Disability Unit, 1994) set out three options to tackle discrimination in employment: a strengthened quota scheme (an option set up only to be knocked down); a voluntary approach based on education and persuasion; and a new statutory right not to be discriminated against.

The Government opposed comprehensive civil rights legislation, which it considered too sweeping and difficult to target on the groups who need most help. It objected to broad criteria for inclusion as 'too vague' and considered any inclusion of people with a reputation for being disabled as confusing; lack of clarity could lead to costly litigation. The costs to business and the assumed consequent effect on international competitiveness are fundamental Government concerns.

The Government outlined its intentions in the White Paper *Ending Discrimination Against Disabled People* (Minister for Disabled People, 1995). The Disability Discrimination Bill was

presented to Parliament in January 1995. The proposals concerning employment abolish the register, the quota and designated employment, and underpin the voluntary system by introducing a statutory right of non-discrimination against disabled people. The provisions which apply to employers of 20 or more include a duty on employers to take 'steps as it is reasonable' to alter the working conditions or working environment to facilitate the employment of an identified disabled person. There are no measures to ensure that workplaces and working practices are suitable for all disabled people.

The new right has the support of a statutory Code of Practice. Under the new law employers set their own targets and monitor their own progress. There will be no targets set by the Government. Furthermore, a new National Disability Council will advise the Government on matters relating to the elimination of discrimination, but no Equal Opportunities Commission, comparable to those set up to protect against discrimination on grounds of race or gender.

Prejudice is being addressed by a new public programme, as part of wider campaign to stress 'ability not disability'. The message that it 'makes good business sense' to employ disabled people is backed by a programme of personal help aimed at making the individual competitive. Existing programmes ensure that the employer will not be out of pocket by taking on a disabled person.

There will be no new benefits to those disabled people who are not considered 'competitive'. The 1944 Act had divided disabled people into effective workers and ineffective workers. Those who previously would have been directed to sheltered employment but now are placed in 'supported' (that is, subsidised) work in open employment will not be entitled to the new right against discrimination in employment.

Structure of discussion

This paper offers an overview of the main changes that have occurred in UK post-war policy for the employment of disabled people. The paper seeks to understand these changes both in the light of government philosophy and objectives and in view of the disability movement's agenda. The argument advanced is that disability employment policy has developed from one concerned with social obligation to one better understood as individual responsibility.

There are four strands to the argument. First, we chart the erosion of the commitment to the principle of obligating employers to employ disabled people. Secondly, we examine the legislative alternative, individually based anti-discrimination measures. We then trace the development of 'persuasion policies' directed at employer practices. Finally, we examine measures which attempt to make the individual more competitive in the market for employment.

Throughout the paper we refer to policy developments in Europe, Australia and North America to explore the potential of other less considered policy options. In the final chapter, we consider

how far the new right against discrimination can stand alone and whether policies of obligation are still required to achieve equality in employment for all disabled people.

1. A parallel act for Northern Ireland was passed in 1945. All reference to the 1994 Act should be assumed to refer also to that act.

2. As responsibility for policy and services differs in Northern Ireland, Scotland and England and Wales, this paper refers generally to UK policy. It is acknowledged that some policies referred to do not apply in all parts of the UK.

Chapter Two

Policies of obligation

In the UK, discussion of what used to be called 'compulsory employment' is dominated by the quota scheme. After decades of defending the principle of a quota system, disabled people have concentrated their campaigns on attaining legislation in favour of individual rights. Government is now repealing the obligation to meet a quota, along with the greater part of the 1944 Act, leaving the door open for further promotion of policies of individual responsibility.

In defence of the quota many arguments have been put for an enforceable scheme, with meaningful penalties. Rarely has reference been made to alternative ways of imposing an obligation to employ disabled people. In this chapter we draw on experience of reconstructed quota schemes in European Union (EU) countries, and look also to Sweden and North America to explore other ways in which obligations to employ disabled people may be made to work. We distinguish between three types of enforceable obligation. The first is the legal obligation to employ specified proportions of disabled people, a measure normally known as a quota scheme. The second is the obligation is to give preference to disabled people, including occupations reserved only for disabled workers. The third type is the legal obligation to demonstrate a commitment to equalising employment opportunities for disabled people in general, through 'employment equity' or 'equal opportunity' programmes.

Quota schemes

Quota schemes can easily dominate discussion, although they may be only one element in a coherent disability employment policy. They lend themselves to outcome measurement and assessment of numerical success and failure, but the quality of employment they obtain is rarely considered.

The UK quota

As the term 'quota' implies, the aim is to ensure that disabled people are represented proportionately in employment. The Tomlinson Report (1943) principle stated that they should be afforded 'their fair share within their capacity of such employment as is ordinarily available' (para. 71a). The quota percentage was set on the basis of limited information about disabled

people in the labour force, however, and did not take account of the distribution of the working population among firms of different sizes (Bolderson, 1980).

Under the 1944 Act, private sector employers of 20 or more were required to employ at least a three per cent quota of registered disabled people. Public employers were not bound by the Act but agreed to accept the same responsibilities. Beneficiaries were those people who chose to register as disabled with the Employment Department and were considered 'effective' in open employment. Employers were required to keep records of their operation of the quota. If they employed less than the quota, they had to give preferential treatment to disabled applicants. Specialist disability advisers within Employment Services were responsible for recommending suitable, disabled candidates.

Employers were not permitted to recruit non-registered disabled employees without a permit from an office of the Employment Services, in theory issued only where there were insufficient registered disabled people to fill the positions in question. An employer acting contrary to this law, in taking or offering to take into employment a person not registered as disabled, committed an offence and was liable to a fine of not more than £400 (raised in 1982 from the previous limit of £100) or a term of imprisonment of not more than three months, or both. (Where the employer is a body corporate, the maximum fine could be £2,000.)

As with all top-down policies, the effectiveness of sanctions depends on a political will to implement them. It was the Secretary of State for Employment who decided whether action should be taken against an employer for taking on a non-registered person contrary to the law. Between 1949 and 1975 six prosecutions resulted in five convictions and negligible fines totalling £284. It was also an offence to fail to keep, preserve or produce records; one case was brought in 1948 but dismissed.

Actual enforcement is not the sole measure of effectiveness; arguably the threat of enforcement serves as a spur to meet the target. Experience shows that this has not been the case. The percentage of eligible employers meeting the three per cent quota declined after the post-war period of full employment from 61 per cent in 1961 to 28 per cent in 1985 and 19 per cent in 1993 (see Table A1). On average, the three per cent quota has not been met since 1961, falling below two per cent by 1975 and standing at 0.7 per cent in 1993 in Great Britain. Beneficiaries dropped commensurately, from 216,511 staff units in 1980 to 95,126 in 1989 (Table A2).

From the early 1960s, bulk exemption permits were routinely issued, covering all appointments and lasting six months, without any analysis of the local situation. Compliance with the Act was seen as obtaining an exemption permit before hiring non-registered workers. In 1979, a Manpower Services Commission (MSC) report commented that the process of permit application had become 'a matter of routine for many below quota firms - a twice yearly exercise which has only a minimal impact on their policies and practices' (quoted in Lonsdale and Walker, 1984, p. 28). From 1973, the number of employers given exemption permits exceeded that of those complying with the scheme (Table A1). It has been estimated that in 1986 no less

than 17 per cent of those not meeting the quota had no permit and were thus breaking the law (Barnes, 1991).

The civil service employs about twice as many registered disabled people as the private sector. In 1993 the average percentage of registered disabled staff in government departments was 1.6. Departmental figures ranged from 3.4 per cent (Department of Employment) to 0.1 per cent. Figures have also been published annually, since 1976, for other public sector employees, including local authorities, health authorities and trusts and nationalised industries; very few bodies exceed the three per cent quota (Table A3). Clearly the figures do not reflect the true level of employment of disabled people, given the low level of registration, but there were no incentives to public bodies to increase their performance. In fact, the opposite was true: the preamble to the announcement of the latest figures announced that the Government 'recognises that the quota scheme may not be the most effective instrument for improving the work position of people with disabilities' (*Employment Gazette*, August 1994, p. 291).

Why the UK quota failed

Clearly, the quota scheme was not successful in promoting the employment of disabled people. Between 1973 and 1991, four government-sponsored reviews referred to its ineffectiveness and recommended radical amendment or abolition, but, with pressure from the disabled people's lobby to strengthen the system and no acceptable alternative, governments repeatedly balked at abolition.

Much of the commentary on the failure of the UK quota scheme has revolved around the impossibility of making the scheme work. Compared with other countries' quota schemes, the UK system was uniquely odd in its conception. It could only penalise an employer found to take on a non-disabled worker when under quota and if not excused through the permit scheme. In orthodox European schemes, on the other hand, any employer, over a given size, who does not have the required proportion of disabled people in the workforce is subject to a penalty.

The quota scheme was introduced in the post-war period at a time of high demand for labour. In 1956, the Report of the Committee of Inquiry on the Rehabilitation, Training and Resettlement of Disabled Persons, the Piercy Report, (Minister of Labour and National Service, 1956) found that the quota was exceeded on average and there had been comparatively few failures on the part of employers to keep to their obligations. That report implies that as a quota scheme may be 'largely unnecessary in a time of full employment' (para. 169) there had been little opportunity to test its operation under pressure. When that test came, it was apparent that Employment Services staff never had the resources to monitor every vacancy and propose suitable, disabled candidates. Moreover, they were caught between discharging their responsibilities for policing the quota and their other purposes of persuading employers to change attitudes to the employment of disabled people.

The existence of the obligation to meet a quota was not well publicised other than through contact with Employment Services staff. Many employers were genuinely not aware of their quota obligations. Research commissioned by the Government and published in 1990 found that over one-quarter of respondents had not heard of the scheme, while a further tenth had, but were not familiar with its requirements. Smaller establishments were much less aware: 40 per cent of those with 20 to 99 employees were unaware of the scheme or its requirements (Morrell, 1990).

The number of registered disabled people declined, although many more were eligible for registration. Consequently, it was technically impossible for firms to meet the target. While in 1950 the number of registered disabled people reached its peak at 936,196, in 1990 it was at its lowest at 355,591 (Table A4). In 1994 it stood at 374,182 (*Employment Gazette*, September 1994). Drops in registration relate to periods of high unemployment rates, especially in the late 1970s. Registration no doubt seemed unproductive, both to disabled people and to Employment Department staff (Townsend, 1981).

The Government accepted that employers could, on average, meet the three per cent quota if all employees eligible to register did so (House of Commons Employment Committee, 1994). An inquiry into why disabled people did not register found that 41 per cent did not know about the register. They did not think they had a need to register to find work (ED, 1990). The long-term decline in the numbers of people registering, Barnes (1991) suggests, was a vicious circle: disabled people did not register because they believed it a waste of time, and Department of Employment policy in failing to enforce the quota simply confirmed that belief.

Reasons for supporting a UK quota

Bolderson (1980) points out that the principles arrived at in 1943 by the Tomlinson Committee accommodated a range of values: 'collectivist notions like the right to work and state intervention, ... integrative assumptions based on egalitarian values ... which did not discriminate between people, ... and individualistic concerns with merit which were linked to notions of 'normality' and independence' (p. 184). Arguments for retaining the quota have drawn variously on those values, attracting proponents as ideologically distant as the Confederation of British Industry and the British Council of Disabled People.

What have been the arguments for supporting the quota scheme? Pragmatically, it was needed until an acceptable alternative could be found. At the instrumental level, the quota offered some 'protection' to disabled people in the labour market and, as a form of positive discrimination, gave disabled people an edge over other marginalised groups seeking employment in a bad economic climate (Lonsdale and Walker, 1984). It was also recognised as an incentive, although weak, to employers. At the level of principle, the quota was a tangible reminder of disabled people's right to work and to a fair share of the available employment (Barnes, 1991). It was an example of 'the responsibility that can be consciously exerted on behalf of the nation as a whole ... to ensure the employment of disabled people' (Townsend, 1981, p. 70).

Pros and cons of quota schemes

It is important to disentangle reasons for failure which are peculiar to the UK method of implementation, and to the UK political and economic context, from reasons which are intrinsic to quota systems.

The pros and cons of quota schemes as a means of achieving 'fair shares' in employment have rarely been addressed. The notion of a quota delivering 'fair shares' is fraught with difficulty, depending as it does on setting the right target to reflect the proportion of economically active disabled people in the population - which, in turn, depends on definitions of 'disabled person' and 'economically active'. Quota schemes are usually thought of as a form of positive discrimination, in that they encourage below quota employers to take on a disabled person in preference to a non-disabled worker. Lonsdale and Walker (1984) argue that the quota system has potential as a method of positively discriminating in favour of disabled people and redressing the social and economic disadvantages they face. Alternatively, positive discrimination may be denigrated because it implies that impairment should be compensated for by special measures. Lonsdale and Walker (1984) argue that the way in which a scheme is or is not implemented determines whether it is mere patronage or a vehicle for achieving disabled people's rights: 'Throughout its life ... the quota scheme has been implemented on the basis of exhortation and patronage rather than stressing the right of disabled people to employment.' (p. 30).

The processes of reporting, monitoring and ensuring compliance of quota systems are administrative burdens. A simpler system might be based on the proportion of new jobs filled by disabled people, such as that in Greece, where a proportion of public sector vacancies must be filled by disabled people and other groups protected by the law. A system which focused on recruitment might also begin to address the problems of unequal access to paid employment among young disabled people (Hirst and Baldwin, 1994). However, it would need additional measures to make sure that existing disabled employees, and people who become disabled in employment, do not lose their jobs.

Quota schemes are not well designed to tackle underemployment. Indeed, there is some evidence from Europe that quota schemes leave disabled people in 'dead end' jobs (Lunt and Thornton, 1993). Most schemes are not concerned with the distribution of employees in all echelons of an organisation, although there is no reason why distinct parts of an organisation, such as the board of the directors or the typing pool, should not conform to a quota.

Quota schemes need special tailoring to encourage employers to take on disabled people who are perceived to have extra needs or to be potentially less productive. In France, a system of weighting operates so that certain disabled employees 'count' more than others when calculating whether the quota is met. However, to make such a system work an infrastructure must be in place to receive and support people with extra needs in the workplace. In the UK, the quota

system applied only to disabled people recruited on merit, in competition with other non-disabled workers, and sheltered employment was designed for people who did not fall into that category.

Any scheme which depends on registration of disabled people to measure achievement is problematic. The arguments about registration parallel those about quota schemes: registration both accords privileges and potentially stigmatises those labelled. Organisations of disabled people reject external 'professional' judgements of disability based on medical diagnosis. In Denmark, disabled people's organisations have long objected to any introduction of a quota on the grounds that it would require registration, which they see as unacceptable. Moreover, registration, and quota schemes which depend on it, work against rehabilitation by encouraging people to continue to consider themselves disabled. France and the Netherlands have introduced quota systems which do not depend solely on registration: people in employment receiving disability benefits qualify for the quota. The Netherlands has introduced a novel way of simultaneously encouraging adaptation of the workplace and extending the scope of quota eligibility: the quota may include people for whom adaptations have been made at work, or who would need adaptations in order to take up a job.

Reformed quota schemes

New and reformed quota systems, in France and Germany, have created additional ways in which the employer might meet the obligation to employ disabled people. The French system best illustrates the options open to an employer. The overall target to be attained is represented numerically, as six per cent of the eligible workforce. But the method of counting includes alternatives to the actual direct employment of disabled people; for example, an employer may contract with a sheltered workshop for supplies or services. Employers may fulfil their employment obligation by reaching and applying an 'accord', negotiated between employers and employees' associations, aimed at the integration of disabled workers into the company.

Additionally, French employers may choose to contribute a sum for each person they might otherwise have employed to a fund for the vocational integration of disabled people. The policy aim was to redistribute funds from those employers not themselves in a position to recruit, train or generally foster the employment of disabled workers, and finance other action towards their vocational integration. A similar 'equalisation' motive underpins the German levy system, based on the principle that all employers should contribute to the economic integration of disabled workers. In Sweden from 1989 to 1990, a temporary levy on employers made it mandatory to pay 1.5 per cent of the company's total wage sum to a Working Life Fund, redistributed for rehabilitation at work, and for changes to the physical work environment and to the organisation of work.

Reserved employment and preferential access

An unambiguous form of positive discrimination is to designate particular occupations for disabled people or to give disabled people preference among applicants for certain jobs. However, such policies can have negative effects when the designated occupations are of low status.

Under the 1944 Act, the Secretary of State could designate 'classes of employment as appear to him to afford specially suitable opportunities for the employment of disabled people'. The occupations of electric passenger lift operator and car park attendant were so designated in 1946. It was an offence to take on anyone other than a registered disabled person for designated employment, without a permit. Back in 1964, all but a small minority of lift attendants and car park attendants were registered disabled (Townsend, 1967) but there appears to be no more recent published information. Technological change has increasingly made the jobs outmoded and fewer personnel are needed to operate them.

There is little support for this type of reserved employment, in no small part because of the low status of the jobs designated. This was recognised as long ago as 1956 when the Piercy Report recommended against any extension which might encourage 'the mistaken and undesirable belief' that disabled people are only capable of low-grade employment (para. 177). It is a mark of the stagnation of policy that designated employment is only now being abolished. It would seem that disabled organisations support the Government's view 'that the concept that there are jobs particularly suited for disabled people is outmoded' (Disability Unit, 1994, p. 84). However, it is not clear whether they would also reject a law which designated high status jobs. In Denmark, disabled people have successfully argued that only disabled professionals can provide certain disability employment services.

Systems for preferential access to specified jobs, as well as types of work reserved only for disabled people, are more common in European countries. People with visual impairment have reserved employment or preferential access mainly as telephonists (as in Denmark, Greece, Italy) but also as physiotherapists and teachers in Italy. In 1985 a report for the EC Commission recommended preferential treatment, providing it was not centred on low-status occupations (Albeda, 1985).

Employment equity

Measures which seek to achieve proportional representation of disabled people in employment, such as quota schemes, do not address the disabling features of work and the barriers disabled people face in the workplace. Anti-discrimination legislation may protect an individual disabled person, and ensure that his or her particular requirements are met, but it cannot directly influence

the construction of work itself and the organisation of the workplace. It is important, therefore, to consider employment equity measures which oblige employers to take steps to improve the representation of disabled people in the workforce by eliminating barriers to their employment.

The nearest the UK comes to an employment equity policy is the Companies Act 1985 requirement on registered companies of 250 and more employees. Such companies must produce a statement in every annual report of the previous year's policy on recruitment, training, promotion and career development of disabled people. However, the requirement is not policed, and companies are not penalised for non-compliance.

In the USA and federal Canada, employment equity law applies to firms that are bidding for federal contracts, and in Australia, as well as Canada, some employment equity operates at state or province level. It is enforced by obliging employers to report on employment practices, keep statistics or produce plans. Through the device of 'contract compliance', firms which fail to remove barriers may lose the right to bid for government contracts.

Although employment equity is primarily a feature of 'new world' countries, there are similar elements in Swedish policy. There, county employment boards oversee employers' compliance with measures to promote the employment of older and disabled workers and, employers may be ordered to provide better employment opportunities. There are hints of a similar approach in the French mechanism for allowing employers to meet their obligation by reaching collective agreements with employees' organisations. In the Netherlands, the law imposes a general obligation on employers, employers organisations and employees to co-operate in trying to employ disabled people wherever possible.

Requirements to adapt work and workplace

In some northern European countries there are legal requirements on employers to arrange work and workplace to maximise the employment of disabled people. In the Netherlands, there is a special emphasis on making jobs suitable for disabled people when new jobs are created. In Germany, employers have to examine a vacancy to see if it is suitable for disabled people; every employer is required to install and maintain workrooms, plant, machines and tools and so arrange the work that the greatest number of severely disabled people can find permanent employment. In both these countries, requirements to adapt the work and workplace operate alongside quota schemes.

Sweden stands out for its strong policy commitment to changing the working environment in order to minimise the disabling effects of work and the workplace. The Work Environment Act legally obliges employers to adapt working conditions to individuals' physical and mental requirements, both to facilitate entry to employment and to prevent illness or accident occurring at work.

Conclusions

We have discussed a range of mechanisms through which a societal obligation to employ disabled people can be implemented. In so doing, we have highlighted the limited range of options considered in the UK. Admittedly, until recently the details of other countries' policies were obscure, and debate tended to take place at the level of polemic rather than informed discussion (Thornton and Lunt, 1994). However, a review of policy and services in 15 countries, commissioned by the Employment Department (Lunt and Thornton, 1993) has brought detailed knowledge into the public domain.

Currently, policy options are severely constrained by the Government's concern to maximise the freedom of individuals and of business, to avoid interfering with the operations of the market, and to minimise the imposition of costs on private enterprise. Arguments put forward by disabled people are similarly constrained: attention must not be diverted from the campaign for enforceable and enforced anti-discrimination legislation. Nevertheless, it is surprising that little regard has been given to employment equity with its promise of addressing fundamental issues about the disabling role of the working environment.

Chapter Three

Individual responsibility

In Chapter Two we discussed measures which aim to protect or promote the collective employment position of disabled people. Here we consider legislative options which aim to protect or promote the position of *individual* disabled people seeking or in employment.

The UK has no history of measures which explicitly protect a disabled person from discrimination in seeking employment, although the 1944 Act gave a registered disabled person extra protection against dismissal. Success for current legislative proposals means that a right against discrimination when seeking or in employment will appear on the statute book for the first time in the UK - despite 14 non-governmental anti-discrimination bills. Before examining the 'new right' in an international context, we briefly consider the effectiveness of the old protection against dismissal, to be replaced by the new law.

Protection against dismissal

All disabled people enjoy the same rights as able-bodied employees to protection against wrongful dismissal, unfair dismissal and redundancy (RADAR, 1992a). It has been more difficult for an employer to dismiss a registered disabled person on medical grounds. The Disabled Persons (Employment) Act 1944 made it an offence for an employer to dismiss a registered disabled person without reasonable cause, if below quota or if the dismissal brought them below quota. An employer would have to prove that special consideration had been given to a disabled person's case, and that the needs of business made dismissal absolutely necessary. The voluntary *Code of Practice on the Employment of Disabled People* (Employment Service, 1993) reminded employers of that offence but advised only that employers considering making a registered disabled person redundant should ensure that 'the same criteria apply to people with disabilities as to all employees' (para. 6.11).

A complaint could be made through the local office of the Employment Services to the local Committee for the Employment of People with Disabilities. If a grievance was upheld, once the employer had a chance to state his or her case, the Secretary of State could press for prosecution. Recent governments did not publicise the Act's requirements and, it is said, Secretaries of State for Employment have been reluctant to enforce it. There have been only three prosecutions; in

1964, 1973 and 1974. In 1992, the Secretary of State said decisions not to prosecute employers for unfair dismissal should take account of 'the public policy interests in mounting a prosecution, in particular whether the prosecution will be in the interests of disabled people' (quoted in *Rehab Network*, Winter, 1992, p. 3) .

Some European countries have taken a stronger stance to protect disabled individuals before notice of dismissal is given. In the Netherlands disabled employees can be dismissed only with the approval of the regional employment office. Germany, similarly, requires the employer to obtain the approval of the relevant administrative authority before giving notice to any registered disabled person employed for six months or more. Before an application is approved, the local assistance council, the staff council and the disabled people's representative in the firm must all be consulted. The procedure has been found effective in preventing dismissal and in about half of the dismissal proceedings brought the disabled person has appealed successfully (Lunt and Thornton, 1993).

Sweden offers perhaps the most comprehensive system of protection in the form of the 1974 Security of Employment Act which incorporates additional provisions for disabled people and gives disabled people special protection in event of lay-offs. Furthermore, the Employment Promotion Act of 1974 requires that information be provided to county employment boards by employers on their current labour force and any impending changes. In the event of non-compliance, a fine may be levied.

New developments: the rights of individuals

New UK legislation promises a statutory right not to be unjustifiably discriminated against in employment, along with a new obligation on employers to make adjustments for a disabled person, where it is reasonably practical to do so. Those rights and duties relate to recruitment, transfer, training, career progression and general treatment at work. The duty of the employer to make adjustments relates to physical features of the premises as well as to recruitment and employment practices. Where there are complaints against employers of alleged unjustified discrimination, the conciliation service of the Advisory, Conciliation and Arbitration Service (ACAS) should be available, and in the last resort there should be a remedy through an industrial tribunal. In addition, the new right needs the support of a statutory code of practice on the employment of disabled people.

The new obligation on the employer relates to the treatment of a specific disabled individual seeking or in employment. Whether the obligation has been met depends on the employer's judgement of what is reasonable for that person: '...it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the arrangements or features have that effect' (Disability Discrimination Bill, 1995, 6(1)(b)). If an individual considers him or herself to have been unfairly discriminated against, he or she can pursue the grievance through a tribunal and obtain compensation and action

against the cause of the grievance. In doing so it is apparent that the *individual* pursues the grievance against a *particular* firm.

The firm when responding to an individual's complaint has little responsibility to make the environment less discriminatory. Instead, the firm settles terms with the *individual*. As the legislation states, the employer has a duty to make adjustments where, '*the disabled person concerned* [is] at a substantial disadvantage in comparison with persons who are not disabled' (italics added) (clause 6(1)(b)). It seems relatively unlikely that adjustments arising from a single individual's needs will have a wider influence on work and workplace. Accommodation made for one person may be particular to his or her impairment and may not help the employment position of other disabled people. There are two dangers here: the danger of issues becoming privatised between the individual and the firm; and the danger that work and workplaces still contribute to social constructions of disability.

Undoubtedly, taking on a disabled worker and making accommodation for him or her will have some spin-off for the broader population of disabled people. But the law is to apply only to employers of 20 or more workers, representing only 65 per cent of the employed population (*Nat West Review*, 1994) or four per cent of all firms. Justification is drawn from the USA, where the Americans with Disabilities Act (ADA) 1990 covers employers with over 15 employees - but Australian Discrimination legislation and Canadian Human Rights legislation do not exempt firms employing low numbers of employees.

Anti-discrimination legislation which operates according to known limitations of specific individuals can be contrasted with the approach of the Netherlands and Germany - outlined in the preceding chapter. We question how much anti-discrimination legislation alone can achieve against structural disadvantage. Whether it must necessarily be complemented with other measures we consider in more depth below.

The rights of 'informed' individuals

Where does the 'new right' leave disabled people who are not 'competitive'? One of the main problems foreseen for the USA's ADA, for example, was how to make people suitably aware of their rights and the operation of the scheme. Clearly, an individual must have adequate education, training and support services to get to the position of being able to use the legal challenges. Advocacy and support may need to be offered for individual cases. Some literature raises doubts about whether the ADA can improve the position of all disabled people (Burkhauser, 1992; Johnson and Baldwin, 1993). Questions include whether the Act can improve employment opportunities for persons with impairments and whether the Act will lead to 'cream skimming' by neglecting the issues of education and training.

In the UK, the onus will fall on individuals to pursue their own grievances. Alternative civil rights legislation advanced in the Civil Rights (Disabled Persons) Bill 1994 saw an important role for a new Disability Rights Commission to monitor the act and investigate complaints

independently. One key role of a Commission under this alternative legislative model would be to 'carry out general investigations with a view to determining whether the provisions of this Act are being complied with.' This use of a strengthened advocacy role would seem more closely modelled on other countries' experience of civil rights legislation.

Australia's Disability Discrimination Act (1992) is administered by the Human Rights and Equal Opportunity Commission under the direction of a Disability Discrimination Commissioner. The aim of the Act was to eliminate discrimination and to promote the recognition and acceptance within the community of the principle that disabled people have the same fundamental rights as everyone else. The Commission can investigate complaints on its own or those brought to its attention.

The Canadian Human Rights Commission enforces the Canadian Human Rights Act of 1977, to which disability was added in 1985. The Commission operates at arm's length from government; it deals with individual complaints of discrimination and promotes awareness of principles underlying human rights legislation. The Commission acts on behalf of aggrieved persons or initiates complaints on its own behalf. The Americans with Disabilities Act (1990) has generated the most publicity and coverage of anti-discrimination legislation. It is the example upon which UK proponents have attempted to model their own approach. Its terms apply to non-federal organisations and it seeks to ensure that firms introduce non-discriminatory selection criteria. It is policed by the Equal Employment Opportunity Commission which again operates at arm's length from government.

In Australia, Canada and the USA the language adopted in the anti-discrimination legislation is very different from that in the UK. The UK Government would seem at pains to distance itself from the USA usage of 'inherent requirements', 'unjustifiable hardship' and 'reasonable accommodation'. The UK approach may appear relatively weak with regard to sanctions, with its emphasis upon conciliation. While Australia and the USA both prefer conciliation, there is the option of formal hearings and ultimately law suits. Similarly in Canada, after the Commission has investigated, a Human Rights tribunal can be appointed to take things further, ultimately levying a fine of $50,000 against firms.

Legislation in isolation

In the UK, anti-discrimination legislation is relatively isolated, with few supportive measures. As Gordon (1992) comments on the situation in the USA, 'Although the ADA does not impose an obligation on employers to *recruit* disabled employees, employers cannot engage in recruitment activities that tend to screen out potential disabled applicants' (p. 206). The experience of other countries, however, has been to accompany anti-discrimination legislation with other measures and legislation. In Australia, when the Discrimination Act was introduced, a Disability Reform Package was also established. The latter aimed to use a variety of training packages and schemes to assist up to 8,000 people to find work. In Australia too, legislation

does not stand alone, but is supplemented by a range of equal opportunity legislation governed by states and government departments. The Public Services Act (1922) and the Equal Employment Opportunity Commission (Commonwealth Authorities) Act 1987 make further provisions for encouraging employment opportunities. In general, disability and disabled people have a high policy profile in Australia and a number of legislative and fiscal packages are attempting to match the rhetoric of promoting social justice.

Similarly, with regard to the USA, the 1973 Rehabilitation Act outlined rights of disabled people in the federal workforce, enforced by the Equal Employment Opportunity Commission. Federal agencies were themselves expected to produce affirmative action plans and operate as model employers. Federal contractors, under contracts in excess of $2,500, had to produce affirmative action plans and make 'reasonable accommodation'. Recipients of federal financial assessment had similar obligations under the Act. Furthermore, at state level there are equal opportunity provisions, as well as additional human rights legislation.

Turning to Canada, in 1991 the Canadian Governmental Strategy for Persons with Disabilities was introduced with a commitment of $158 million over 5 years. In the last decade there has been a growth in the strength of the Canadian disability movement and growing public awareness of disability related issues. As in Australia, there is also a range of employment equity and equal opportunity measures - Employment Equity in the Public Service, Employment Equity Act and the Federal Contractors Programme, all introduced in 1986. In relation to the Employment Equity Act, disabled people are one of the four target groups. That Act seeks to achieve 'equality in the workplace so that no persons shall be denied employment opportunities or benefits for reasons unrelated to ability...'; moreover, 'employment equity means more than treating persons in the same way but also requires special measures and the accommodation of differences' (section 2). Its aim is to identify and eliminate barriers and encourage positive policies and practices. Some Canadian provinces have attempted to shift this principle into the private sector.

Finally, although all countries have a range of financial measures and incentives to encourage employment of disabled workers, there may be an argument for strengthening these measures when introducing anti-discrimination legislation. In the USA for example, the Revenue Conciliation Act 1990 added an 'access credit' to the code which allows small business to claim against taxes for certain costs of ADA compliance. The aim of this legislation is especially to encourage small businesses. In the UK, the Civil Rights (Disabled Persons) Bill recognised this issue in taking into consideration that accommodations may unduly prejudice business operations. In addition to the nature and cost of changes, and the overall financial resources of workplaces and employers, another factor it considers is, 'the availability of grants from public funds to defray the expense of any accommodation'. Similar consideration and provision would seem to be absent from the Government proposals. The issue of where to situate costs of accommodation for anti-discrimination legislation has a bearing on the nature of obligation imposed and the ultimate success of policy.

Outlook for the UK

By itself, the scope of UK anti-discrimination legislation may be limited. Quite apart from recognising potential problems in implementation, we question what these measures can achieve standing alone. Anti-discrimination laws have the advantage over the old quota scheme in that they may tackle the problem of underemployment, through confronting the kind of discrimination which prevents advancement at work. But a disabled person must be in employment or competing for a particular post before he or she can be protected; that is, able to perform the 'essential requirements' of the job.

A right against discrimination does not by itself guarantee the interview for the job. The 'new right' is to be backed by a statutory code of practice. As its contents are yet to be written, the code's power to affect the way in which job specifications are written remains to be seen. Unless the nature of the job is changed before the onset of recruitment, the potential for disabled applicants remains constrained.

The effects of legislation against discrimination are notoriously difficult to measure. Does a low level of complaints against employers mean the law is working well, or badly? How can any increase in employment of disabled people be identified and monitored? Difficulties such as these will be particularly pronounced in the UK where grievances are in the first instance a private concern, where employers have no obligations to report their practices, and where there are no powers of investigation. In the USA some commentators suggest limits on research and data collection impede the ability to evaluate implementation strategies and assess the long-term impact of the ADA (West, 1994).

That said, anti-discrimination legislation may have purposes other than simply defending the rights of individuals in particular cases. It may have an important educative role; in Australia, for instance, legislation to eliminate discrimination also aimed to promote recognition and acceptance of the principle that disabled people have the same fundamental rights as the rest of the community. There may therefore also be an important symbolic role for legislation. In Canada, for example, it is said that public debate surrounding employment equity and human rights has served to heighten the awareness of many employers as to their responsibilities (Neufeldt and Friio, 1995). Will any new law in the UK achieve such educative and symbolic importance?

Chapter Four

Persuasion policies: bribes or good business sense?

In Chapter Two we reviewed legislative measures which impose general obligations on employers to hire and retain people termed 'disabled'. Chapter Three considered how a legislated 'right not to be discriminated against' might affect the employment position of individual disabled people, and whether individually-based rights could improve the employment position of disabled people as a whole. Here, we examine what in the UK is known as the 'voluntary approach' to changing employers' practices, founded on persuasion not regulation.

'Persuasion policies' are a feature of most countries' policies for the employment of disabled people and rely on inducements to change employers' practices. Employers may be persuaded by three devices: financial incentives; increased status; or the potential for business gain.

Inducements are typically overtly financial, linked to the employment of disabled individuals, and paid as bonuses, tax deductions, relief of employers' national insurance contributions, and so on. Such financial inducements are, of course, common measures to encourage the recruitment of other marginalised groups in the labour market, and are intended to reduce unemployment generally. As a consequence, disabled jobseekers may compete variously with school leavers, older workers and women returners, depending on the current state of the labour market. Alternatively, payments by the state may compensate employers who would otherwise be 'out of pocket' because of employing people who impose extra costs, are less productive than non-disabled people, or both. It is less usual to give grants to employers to permit them to adapt the workplace or working practices and so facilitate the employment of disabled people in general.

Although the reasoning behind financial incentives is rarely made explicit, their existence may signal to the employer that disabled people have less to offer than others; 'this contradicts the notion that they have the same rights to a job as anyone else' (Lonsdale, 1985, p. 128). Grants for alterations may suggest that accommodations for disabled people are *de rigeur*, and so deter the prospective employer from engaging in the assumed upheaval and administrative costs.

A second inducement to persuade the employer to take on disabled people may be public acclaim and increased social standing. Occasionally, governments award prizes, for example to employers who have exceeded targets for employment of disabled people, or confer badges or other symbols of status to those who exemplify aspects of good practice. The rationale may be, crudely, to praise the employer's magnanimity; a mark of a 'good employer' is discrimination in favour of the deserving.

A different approach to persuading employers, increasingly promoted in the UK, is to argue that business will gain, not lose, from having disabled people among its employees -that it 'makes good business sense'. The 'business sense' case is argued in terms of benefits which are likely to accrue, not disbenefits which will befall a firm which fails to comply. The North American concept of 'contract compliance', where a firm gains business if it can demonstrate good employment practices, is unacceptable to a UK government set on non-interference in the market.

Promoting the profitability of disabled employees accords with the UK Government's concern to avoid imposing costs on employers. It objected to recent attempts to introduce comprehensive anti-discrimination legislation for not consulting business interests and for seeking to impose excessive costs on business. Rather than alienate business interests, the policy is to court them. Thus, the approach is to build on a range of voluntary measures and maintain the momentum established, without the necessity for compulsion. The Government has further distanced itself from intervention because of its desire to avoid detrimental economic effects through interference with the free workings of the labour market. Rather, it seeks to convince employers of the sense of employing disabled people.

The Government's commitment to non-intervention is evident in the warm welcome given in the White Paper to 'the strong and imaginative contribution being made by organisations such as the Employers' Forum on Disability in promoting and sharing good employment practice' (Minister for Disabled People, 1995, para. 3.2). Governmental support for employer forums and networks not only confirms the case for a voluntary partnership rather than a statutory approach but also signals further attempts to distance government from responsibility for the implementation of employment policy.

As we will show, the UK, in common with many countries, has used financial and status rewards to pursue policies of persuasion. However, in the primacy it now accords to promoting good employment practices as 'good business sense', now with no financial inducements and only limited regulation, the UK stands alone among EU and New World countries. We look first at the persuasive power of money before examining current approaches to changing employers' attitudes.

Bonuses, grants and subsidies

Financial support for employers can have three purposes: to provide a reward or bonus for taking on a disabled person rather than an equally qualified non-disabled person; to grant all or some of the costs of adapting the workplace or working environment to accommodate a disabled person; and to subsidise the wage bill as compensation for disabled employees' reduced productivity.

The UK has tended to avoid heavy use of systems of financial reward as mechanisms for regulating the labour market, unlike other EU member states which can offer relief of national insurance contributions, or the USA which operates a system of tax deductions. The recent announcement of a national insurance 'holiday', encouraging employers to take on people unemployed for two or more years, is novel in the UK context. The idea that employers might be rewarded for taking on disabled workers is antithetical to the principles of the Tomlinson Committee and the 1944 Act which expected disabled people to be employed on merit and in equal competition. The 1956 Piercy Report rejected the suggestion that employers should receive assistance in the form of a supplement to wages.

Currently, only one scheme provides a financial reward for taking on a disabled employee - the Job Introduction Scheme. Under this scheme an employer is encouraged to take on a disabled worker for six weeks and is paid a grant towards the wages of £45 a week. The scheme was introduced in 1977 at £30 per week. It was reported by Lonsdale (1981) to be 'very successful' when it stood at £40 per week. In 1988/89 and 1989/90 it provided help to just over 2,000 and 1,817 people, respectively. A temporary scheme such as this may be interpreted as part of a rehabilitation programme rather than as a compensation to employers.

In the UK, financial support for employers has been designed in the main to meet the second purpose, contributing towards the costs of adapting the working environment to meet the needs of a specified employee. However, take-up has been poor and the few schemes tried have been under-used. Schemes targeted at the employer, such as the Adaptions to Premises and Equipment Scheme, begun in 1977, have now been incorporated in the overall Access to Work programme designed around the disabled employee. The Access to Work programme, introduced in 1994, provides practical help to disabled people to get into, or stay in, employment. The Employment Service and not the employer will bear the cost of, *inter alia*, physical alterations to the workplace, special equipment or adaptations to existing equipment, deaf awareness training for co-workers, or job coaches to help familiarity with new tasks. There is no charge for any assistance, except where the help brings general benefits to the business (for example, equipment that non-disabled employees would also use) and the percentage contribution is calculated according to the particular circumstances. As we show in the following chapter, the withdrawal of employer-targeted incentives means that the money available follows the individual, in theory strengthening mobility and individual competitiveness.

Compensation for reduced productivity has only recently been introduced into UK policy. The Tomlinson Committee had found subsidies both undesirable in principle and impracticable, a

view reiterated by the Piercy Report which rejected the implication that disabled people were less capable and a potential form of cheap labour. The Piercy Report also commented that employers had so far willingly carried any extra costs involved. However, the extension of 'sheltered' work into open employment for people who had been categorised as severely disabled and not capable of competitive work led to the introduction of a mechanism for subsidy. While employers are not compensated directly for reduced productivity, under the Supported Placements Scheme the employer pays only a portion of the wage and the state, through an agency, pays the remainder.

Despite the existence of schemes giving financial support to employers, they are not promoted as 'financial incentives' to take on disabled workers. Rather, the schemes are said to offer an opportunity to discover disabled people's skills and potential, and to deal with any practical concerns, so building on the notion that it makes economic sense to employ disabled people. The Job Introduction Scheme, which as yet has not been incorporated within the Access to Work programme, is a good illustration.

Promoting good employment practices

Policing the statutory obligation to meet a quota was one way of 'persuading' employers to take on disabled workers, but from the late 1970s voluntary action by employers began to be promoted as an implicit alternative to meeting statutory obligations. In 1977, a 'Positive Policies' campaign was launched 'to develop enlightened internal company policies' and 55,000 firms were targeted with booklets outlining six main guidelines on recruitment, retention, training and career development, and modification and adaptation of equipment and premises (Lonsdale and Walker, 1984; Lonsdale, 1985). Lonsdale and Walker (1984) comment that the government agency, the Manpower Services Commission (MSC), itself found the campaign to have had 'minimal impact'; only one in five employers contacted by the MSC remembered having received and read the literature.

Two years later, a 'Fit for Work' campaign attempted to bolster the limited impact of Positive Polices by conferring 100 awards each year to firms that made 'outstanding achievements in the employment of disabled people', measured by adherence to the same six guidelines. Lucky winners of the award received a presentation plaque, citation and desk ornament and could use the award's emblem. The scheme lasted for 11 years but is reported to have had little impact. (Interestingly, a similar award scheme was tried, and soon found to fail, in the period after World War I. Firms which ensured five per cent of their employees were disabled veterans, a voluntary target, were named on a roll of honour called the King's Roll.)

The 'Fit for Work' campaign, in rewarding employers for employing disabled people, not only introduced a new element of benevolence in open employment but also appeared to contradict the Tomlinson Committee principle of employment on merit and in normal competition (Lonsdale and Walker, 1994). These two campaigns, with their emphasis on persuading

employers that disabled people are 'fit for work', foreshadowed the 'good business sense' rhetoric which predominates today.

In the UK now there are three strands to the promotion of good employment practices: voluntary codes of practice, reinforced by symbols demonstrating adherence; an obligation on large companies to publish a statement of policy in their annual report; and the role of government departments in setting an example.

Voluntary code of practice

In 1982, in the wake of unsuccessful attempts to abandon the quota scheme, a voluntary code of practice was first drawn up. Indicative of the Government's preference for persuasion rather than legislation, a non-statutory Code of Good Practice on the employment of disabled people was introduced in 1984. This was updated in 1990 and again in 1993. Although 120,000 copies were distributed, Government research estimated that it was received by less than one-fifth of all employers (Morrell, 1990). As noted elsewhere (Thornton and Lunt, 1995) much of the 62 page document, *Code of Good Practice on the Employment of Disabled People*, is, in fact, devoted to answering some of the practical concerns potential employers may have, providing sources of help, and convincing them that disabled people are productive workers. The document aims to help companies specify their objectives and draw up a policy, rather than to set out targets or measures of achievement.

'Two-ticks' symbol

Similar to the 'Fit for Work' symbol which it replaced, the 'two ticks' symbol, first introduced in 1990, demonstrates an organisational commitment to good employment opportunities for disabled people. The symbol is used on advertisements and recruitment literature. It is not awarded, but is adopted voluntarily by those employers who, after discussion with Employment Service officials, have a commitment to implementation. Use of the symbol by firms highlights five commitments that participating companies make: guaranteed job interviews to disabled applicants who meet the minimum criteria for a vacancy; consultation with a disabled employee at least once a year about his or her requirements at work; keeping a worker in employment if he or she becomes disabled; improving disability awareness among key employees; and checking progress, planning ahead and informing all employees of progress and plans. According to the 1995 White Paper, the number of employers using the symbol has increased from around 300 in June 1993 to an anticipated 950 by the end of 1995.

Companies Act

In 1980, a regulatory measure joined the voluntary initiatives. The Companies (Director's Report) (Employment of Disabled People) Regulations 1980 were incorporated in the Companies Act 1985. It placed a duty on all UK registered companies employing more than 250 people to include in their annual Directors' Report a statement of the policy applied during the previous year on recruitment, retention, training, promotion and career development of disabled people. These statutory requirements relate to policies for the employment of disabled workers generally and not only those registered disabled under the 1994 Act. Although the Act does not apply to public sector employers, both the Employment Department and the Department of Trade and Industry (who administer the Act) have advised that public sector employers should also adhere to its regulations (Employment Service, 1993).

Setting an example

A further strand of persuasion has been to emphasise the importance of government bodies and departments in setting an example in the employment of disabled people. As pointed out in Chapter Two, the civil service currently employs about twice as many registered disabled people as the private sector. Government departments aim to set standards in their own employment practices. There are numerous initiatives, although there is no compulsion or obligation.

In 1985, the Equal Opportunities Division of the Cabinet Office introduced a Code of Practice on the recruitment, retention and promotion of disabled people in the civil service. The Code of Practice was upgraded in July 1994 to a Programme for Action, giving it equal status to similar programmes for women and people of ethnic minority origin (*Programme for Action to Achieve Equality of Opportunity in the Civil Service for Disabled People*). It includes detailed 'action checklists'. The Office of Public Service and Science will draw up lists of objectives and will monitor and review progress across the civil service annually.

Departments are encouraged to assess their current positions, possibly through surveying numbers of disabled employees. An accompanying support document, *Focus on Ability: A Practical Guide to Good Practice in Employment of Disabled People* (Cabinet Office, 1994) provides practical advice on implementation. This encourages staff awareness of equal opportunities and disability issues, the appointment of a disabled people's officer, consultation with disabled staff and discussion of recruitment and retention.

Good business sense

The current rhetoric - that it makes 'good business sense' to employ a disabled person - is the culmination of a long campaign to convince the employer that the disabled worker is as good as someone who is not disabled. Even in the early days of the quota scheme, according to the Piercy Report, its 'main value' was that 'it has provided a sound basis for publicity among both employers and workpeople to show the industrial value of disabled persons' (Minister for Labour and National Service, 1956, para. 169).

The dominant line of persuasion is that disabled workers are to be valued not only for 'ability not disability', but also because they are potentially a more profitable asset to an employer than a non-disabled person. Employment Services literature stresses that in excluding disabled people 'you could be missing the best person for the job', and in keeping on a disabled person 'you keep their skills and experience and you save the cost (and inconvenience) of replacing them'. Disabled people's organisations are equally keen to dispel the myths that disabled people are less productive and have bad sickness records. RADAR (1993) cites evidence from a local survey of employers: 43 per cent reported the attitude of disabled people to work was better than able-bodied workers', with 55 per cent rating it equally; 70 per cent rated disabled workers' attendance as equally good, with 26 per cent rating it better.

The second emergent justification of disabled people as 'good for business' relates to the image of the firm as a 'good employer'. We have already referred to the promotion of the disability 'two ticks' symbol as a way of publicising the political correctness of employers. Anecdotal evidence from France and from Canada suggests that being seen to employ disabled people helps promote a fashionable image for a firm, and thus boost sales, trade or other business (Leichsenring and Strümpel, 1995).

'Bad for business'

The 'good business sense' argument is premised on the competitive disabled employee, who with 'practical help' is equally - if not more - productive than a non-disabled worker. The corollary is that there are groups whom it does not make 'business sense' to employ. For those people who cannot be made competitive, residual job creation measures are unavoidable.

One of the paradoxes of the new right not to be discriminated against in employment is that certain disabled people deemed incapable of competitive employment will be denied that right. The disability discrimination legislation will allow positive discrimination in their favour, so that they may join a Supported Placement Scheme (SPS). This state subsidised, mainstream employment for severely disabled people began as Sheltered Industrial Groups in the 1960s, was replaced in 1985 by Sheltered Placement Schemes, and was renamed Supported Placements in 1994. The state pays part of the wages, up to a financial limit for each place, and the employer the rest, so that the disabled employee receives a full wage, comparable to that of a non-disabled

employee. There is no direct subsidy to the employer as the disabled person is in fact employed by a local authority, voluntary body or Remploy, which arranges the placement and pays the wages.

The majority of people on the SPS have learning difficulties. Placements tend to be in less well-paid, low-status jobs. Numbers have grown rapidly from 1,049 in 1985 to stand at 7,210 in 1993. The scheme is intended for people placed in 'supported employment'. This recently introduced term encompasses both work in sheltered factories and workshops and supported placements with mainstream employers. The aim is to freeze numbers in sheltered workshops and promote the considerably cheaper alternative of supported placements.

Writing in *The Guardian* (30 November, 1994) James Erlichman questioned whether the 'feel good factor' of supermarkets' 'generous gesture' in employing people with learning difficulties would win more custom than it cost. Nevertheless, it may in fact make good business sense to employ a person under the Supported Placements Scheme in that the firm is only meeting part of a person's salary.

Discussion

As we have shown, the UK uses no financial inducements to encourage employers to take on or retain disabled employers, and in this respect it stands alone in the international context. Nor are there financial inducements to create barrier free work environments and accessible production processes, like those in Sweden or the Netherlands. Compensation is not part of the UK tradition and disabled people's organisations see subsidies for individuals as demeaning. The absence of state financial help for the employer to accommodate disabled employees under new anti-discrimination laws accords with UK tradition. However, the employers' position, articulated by the Institute of Directors, is that measures to promote the employment of disabled people are social, and should be financed by tax-payers (*The Independent*, 20 September, 1994).

Policies focusing on the 'demand side' of labour are merely educational. Employers are encouraged to change their practices to promote business interests, not out of social obligation. The idea of it being good business sense to employ disabled people is implicit in policies elsewhere. Where the role of the market and the place of the individual are emphasised, the notion of 'business sense' becomes explicit, as in the USA. In those European countries where traditions of obligation and compulsion, and of dependency and charity, still rule, policy is less likely to be driven by a recognition that disabled people are productive in their own right.

How can a voluntary approach increase the quantity and quality of employment? Policies aimed at 'setting an example' and those that seek to work through organisations in a voluntary way have a long-term agenda. Assessing success is more difficult than measuring the impact of employment obligations. It is apparent that a voluntary and educational approach results in a variety of provision and varying standards, dependent on the resources and will of employers.

A recent study of policies on recruitment and employment found that fewer than half the organisations surveyed had an explicit policy relating to the employment of disabled people (and only a quarter had a clear written policy). Larger organisations were much more likely to have such a policy, as were organisations which already employed disabled people (Honey *et al*., 1993).

In attempting to change employment practices, the UK is not out of step with current policies in, for example, France, the Netherlands and Canada. However, in these countries the mechanisms for encouraging good practices are legislative, and in the Netherlands and Canada penalties may be imposed for non-compliance. A statutory code of practice in the UK may increase both coverage and standardisation, but as the Law Society (1992) pointed out, is dependent on official discretion.

Chapter Five

Making the individual competitive

This chapter examines the final strand in our argument, namely the dominance of policies focused on the individual, aimed at making the individual worker more competitive in the labour market. Here, we pursue the point that the institutional features of work have not been adequately questioned in relation to disabled people and that 'theories about their integration into employment have been predominantly individualistic - that everything depends on the capacities, skills, willingness and other personal characteristics of disabled people themselves' (Townsend, 1981, p. 69).

The concentration on competitiveness in the labour market is by no means solely a UK phenomenon. According to a report by an evaluation panel drawn from 14 Office for Economic Co-operation and Development (OECD) countries, 'In all countries, measures to enhance the competitive power of individuals with disabilities is a cornerstone of policy' (OECD, 1992, p. 25). The OECD report maintains that 'making the individual competitive' involves both measures to prepare and train the individual for the labour market and also measures 'which aim at reducing or eliminating the personal impediments' (p. 25) and so 'minimise the impact of the impairment on their productivity' (p. 30).

Discussion of measures in the UK focuses around employment services and training, financial and practical help for employees, and financial incentives to take up work, notably the Disability Working Allowance. In this context, we also consider self-employment and disabled people.

Disabled employment services

Large numbers of registered disabled people were in open employment in the five post-war years, reaching an all time high of 906,000 in 1950. After the post-war period of full employment and as the demand for labour declined, the special placement services established in tandem with the quota scheme became more essential. Officers of the Disabled Resettlement Service (DRS) were increasingly trying to match unemployed disabled people to opportunities with targeted employers.

One part of the DRS officers' role was to build up a relationship with local employers so that they were receptive to disabled workers. This policy of education and persuasion sat uneasily

with the officers' other function of enforcing the quota scheme, although the overseer role gave an entry to employers who might not otherwise have been accessed. The introduction of the Disablement Advisory Service in the early 1980s to provide specialised help for businesses and encourage them to develop 'good employment practices' left a separate and reduced DRS to work with disabled people. A unified service was reintroduced in 1992 in the shape of the PACTs (Placing, Assessment and Counselling Teams) which work both with disabled applicants and with employers.

Meanwhile, the trend had been to direct disabled people seeking jobs to mainstream Job Centres, their satellite Jobclubs, and to other job-finding programmes which emphasise individual effort. Barnes (1991) provides a comprehensive review of evidence of institutional discrimination within these services in the 1980s, including limits on access to the buildings and to their amenities, lack of special aids and equipment and discriminatory behaviour by staff. A key element of the Department of Employment's strategy for the 1990s was formulated to ensure that, as far as possible, effective and accessible provision for disabled people is made in the Department's mainstream schemes and services. Unemployed disabled people should have priority for places on mainstream employment and training courses. Now, the majority of disabled people helped by the Employment Services use the integrated mainstream services. People who need extra help are served by the PACTs and Disability Employment Advisers who work within those teams.

Internationally, disabled people's organisations are beginning to provide specialist job consultants who offer employment support services for their own members. In Denmark, for example, disabled people's organisations have campaigned for public finance for their own user-controlled employment services.

Training

A range of mainstream and specialist training services available for disabled people is organised by Training and Enterprise Councils (TECs) in England and Wales and Local Enterprise Companies in Scotland (LECs). TECs and LECs operate under a contract with the Employment Department to deliver Government training schemes such as youth training and services for adult workers by arranging provision through local training providers. Every year they must draw up a Business Plan and indicate how they intend to fulfil their obligations, including services for 'people with special needs' (RADAR, 1992b). In addition to supporting employees, TECs and LECs must also offer help to entrepreneurs. Disabled people make use of these mainstream services; for example, about ten per cent of people involved in the Employment Training scheme say they have health problems or disabilities (Finn, 1992).

Mainstream services of particular interest include the Training for Work scheme which is aimed at helping long-term unemployed adults to find jobs and improve their workskills. Normally only those who have been without a job for six months are eligible, but disabled people have priority

as soon as they become unemployed. The scheme has 320,000 participants a year, 11 per cent of whom are disabled people (*Employment Gazette*, April 1994). A training allowance is paid, usually £10 higher than the weekly benefit entitlement, and some help may be given with travel costs. Similarly, Learning for Work offers full-time courses of education leading to vocational qualifications. Individuals have their fees paid and will receive an allowance equivalent to their benefit entitlement. Youth Training is available to young disabled people aged between 16 and 25 years, rather than 16 to 18 for non-disabled people. Trainees can obtain a qualification to National Vocational Qualification (NVQ) level 2. Of the 230,000 participants on youth training, around five per cent were disabled people (*Employment Gazette*, April 1994).

In 1993, 20,000 fewer disabled people entered Employment Training and Training for Work Schemes than in 1989. Performance Related Funding arrangements with TECs may have led to training providers giving preference to people better able to achieve work or NVQs. This is given as a reason for fewer disabled people being taken on (*Disability Now,* April 1994, p. 7). Any trend to assist those perceived as the most able, at the expense of those with the greatest disability, needs close monitoring (Massie, 1994).

Other examples of disabled people's instant eligibility for training services set aside for long-term unemployed people include Jobclubs, where the skills of marketing oneself for employment may be learnt.

The Government is keen to support networks of employers to promote training and employment of disabled people among their members. The national Employers' Forum on Disability and local networks are strongly encouraged, although they have no formal roles in implementing policy. This is an interesting development as there is no legislative responsibility but only a voluntary commitment. Disabled people are now beginning to set up disability awareness services and thus become service providers.

Rehabilitation

Employment Rehabilitation Centres (ERCs) were established in 1943 and by 1978 there were 27 centres. They were criticised for focusing on rehabilitation to manual or lower skilled work which perpetuated the occupational pattern of disabled people (Lonsdale, 1985). Increasingly the centres came to serve high proportions of clients who had been out of work for a long period, including non-disabled people. By the end of 1992, all ERCs had been closed. Their assessment functions were transferred to the PACTs. Rehabilitation was by then provided by rehabilitation agents. Since 1993, to improve efficiency and value for money, all local contracts have been competitively tendered and awarded for up to two years.

In 1992, the OECD found that employment services in the UK had a more central role in the provision of rehabilitation and training than in most countries, where the rule was for governments to reimburse community organisations and private initiatives. The latter arrangement could result in very complex systems and problems of coordination (OECD, 1992). Now, however, in the UK, in both training and rehabilitation, there is a shift towards contractual

private agency provision and away from statutory responsibility and regulation. This trend raises further questions about the appropriateness of throughput as a measure of efficiency where services for unemployed disabled people are concerned.

Support for employees

The UK is exceptional in directing substantial financial support at the disabled person and none to the employer. The Access to Work programme was introduced by the Employment Department in June 1994, aimed at extending and simplifying the range of services available to disabled people and their employers. It brought together a number of previously separate schemes targeted at employers and at disabled employees. Now the support is claimed by the disabled person and not the employer, including the old Adaptations to Premises and Equipment Scheme.

Access to Work offers practical help and advice tailored to the individual's needs for a particular job and exact assistance will depend on those needs. Services covered by the new scheme include: assistance, such as communicators, for people who are deaf or have hearing impairments; part-time readers or assistance at work for people who are blind; support workers for those who need practical help either at work or getting to work; and a job coach or temporary support worker where needed for a person to become familiar with tasks of new job.

Finance is also available for changing the workplace including equipment or adaptation to existing equipment to suit individual needs; alterations to premises or working environment so that a disabled person can work there; and adaptation to cars or additional transport costs. The ceiling amount to be spent per person is £21,000 over a five year period, although in exceptional circumstances the Employment Service can authorise more (RADAR, 1994). To receive Access to Work benefits, individuals do not have to be registered as disabled, but their disability or health problem should be one which affects the kind of work they can do and which is likely to last for 12 months or longer.

As cost ceilings relate to individual disabled employees, there is no limit to the amount of assistance an employer may indirectly receive. Following opposition from disability groups, the Government dropped its original proposals to make the employer pay half the cost of equipment for a disabled employee after six months. The budget for 1994-95 is £14.6 million.

Compared with other countries, the UK system appears streamlined and easy to access. Elsewhere, variable eligibility criteria, proliferation of agencies, different types of subsidy and differing regulations pose considerable barriers to disabled people and their employers (Lunt and Thornton, 1993).

Disability working allowance

An important development in disability employment policy has been the introduction of disability working allowance (DWA) in April 1992 as a benefit aimed at encouraging disabled people into work by topping up low earnings. DWA is specifically aimed at helping those on invalidity benefit and severe disability allowance to take up low-paid employment. Its introduction reflects the belief, central to recent government employment policy, that improving incentives will encourage those at the margin, whether prospective employers or employees, to engage in increased economic activity.

The benefit is analogous to family credit which is a benefit supplementing low family incomes. DWA is paid on top of low wages or self-employed earnings for people whose disability put them at a 'disadvantage in getting a job'. People must be working for 16 hours or more and be receiving one of a range of 'passporting benefits' in order to qualify.

The benefit was considered necessary because of evidence of disincentives to work caused by low pay and relatively high disability benefits. As SCPR/SPRU (1993) note, prior to the introduction of the DWA, the social security system created disincentives for disabled people to enter work in two ways. First, there was little possibility of building on partial capacity for work via the benefits system. Secondly, disabled people were unable to experiment and test their capacity for work without losing entitlement to long-term benefits. DWA has the additional attraction that, if the job does not work out and the person has to resign, benefit entitlement for invalidity benefit or severe disability allowance is safeguarded for up to two years as long as the person is still incapable of work.

Compared with government expectations, the operation of DWA has been less encouraging. Some commentators (Burgess, 1992; Finn, 1994) suggest structural factors of DWA, such as the means-test and potential 'poverty trap', limit its use. The structure of DWA could be contrasted with a partial capacity benefit which restricts hours or earnings to reflect a person's work capacity but does away with the need for a means-test limit. Furthermore, detailed research commissioned by the Department of Social Security has also pointed to the limits of this supply-side response. As Rowlingson and Berthoud (1994) note, it was estimated that 50,000 would claim DWA. Two years after its introduction, however, that number is under 5,000. Their provisional research findings suggest that 80 per cent of those receiving the benefit were already in work before they heard about benefit and so cannot have been encouraged to look for work because of it. This has supported the earlier suggestion of others (Burgess, 1992). The findings of Rowlingson and Berthoud further suggest that only six per cent of DWA recipients had heard of the benefit before starting work and would have been unlikely to take the job if DWA had not existed.

The tentative conclusion would be that few have been encouraged to take a job, although perhaps it is too early yet to review the situation. Rowlingson and Berthoud also estimate that take-up is currently only about 17 per cent, while, interestingly, one-quarter of DWA recipients

are self-employed workers. The overall suggestion of the researchers is that unemployment may be more of a barrier to work than any 'benefits trap'.

Self-employment

Self-employment is considered important for disabled people because it may offer a more convenient and flexible method of working. This form of working is an area of growth within the economy. It is estimated that 12.4 per cent of the workforce are self-employed (Employment Department, 1994b), while disabled people are more likely to be self-employed than the general population (Prescott-Clarke, 1990).

The Employment Department in the UK has recognised this as a important element of policy for disabled people (Corden and Eardley, 1994). To encourage disabled people to pursue self-employment there are three specialist schemes which apply to only a small number of workers, while special aids and adaption are available as in the Access to Work Scheme. It is difficult to gauge how many disabled people make use of the mainstream schemes to encourage self-employment: Enterprise Allowance and the Business Start-Up Scheme. The Consultative Document of 1990 (Employment Department, 1990) suggested that Enterprise Allowance, for example, covered 5,500 new participants with disabilities.

According to one self-employed disabled person, 'At least with self-employment you can't discriminate against yourself, you are in control and that's the first element of empowerment' (quoted in George, 1994). The issue of self-employment, and especially homeworking, is bound up with more general discussions of the future organisation of labour.

Discussion

The increased role of the private sector, decentralised services and deregulation is a more general phenomenon outside the UK, raising many questions about minimum standards, quality standards, finance and co-operation between service providers and government agencies (Strümpel, 1995).

According to the OECD, the challenges facing training are to reorientate it towards openings in the service industry, to increase variety in programmes to serve a more heterogeneous target group, and to improve job-seeking skills (OECD, 1992). In other words, to ensure that disabled applicants are equipped for existing opportunities, to tailor individual training to help bridge the 'skill gap'. Not addressed is the need to direct training at the non-disabled workforce, so that disabled employees might be better accommodated.

On-the-job training may be made available as one element of the Access to Work programme but is not a significant option in the UK which adheres to the traditional approach where assessment and training precede placement. Outside the UK, the development of models of supported employment is challenging the traditional ideologies and practices of rehabilitation and employment services (OECD, 1992). In the USA, supported employment has been interpreted as ensuring the rights of severely disabled people who have been excluded, devalued and disenfranchised on the basis of their lack of vocational competence (Lunt and Thornton, 1993). By changing the nature of the job to suit a severely disabled worker and by providing the right level of support and guidance, supported employment lays emphasis on the relationship between the individual and the surroundings, not on 'inherent' deficiencies.

The Access to Work programme has the potential to give the disabled worker more control over decisions about the best way of meeting his or her needs in a particular place of employment. As such, it parallels the promised new opportunity for disabled people to receive cash payments in lieu of community care services, announced in the House of Commons as part of the Government's statement of intent to introduce a Disability Discrimination Bill (*Hansard*, House of Commons, 24 November 1994, col. 744). However, it has also been criticised for its individualised solutions to problems, such as transport to work which might be better met by a transport system accessible to all. The contradiction of Access to Work is that, on the one hand, it offers more control and more sensitive help, while, on the other, it reinforces an approach which assumes the 'problem' of disability to be located in the individual.

In the absence of measures directed at all employers to adjust work and workplace so that any disabled worker might benefit, the impact of the Access to Work programme on the working environment will be limited. The existence of Access to Work will not replace or reduce an employer's responsibility, under the new statutory right, to make a reasonable adjustment, but the implications of the new legislation for Access to Work are not yet clear.

The assumptions underlying DWA are firmly located in supply-side solutions and a belief in individual responsibility as opposed to social obligation. There is a clear view in this policy of economic, rational actors acting at the margin to take-up opportunities that were previously not worthwhile. Underlying the DWA is the assumption that job opportunities do exist which persons on the margin can be persuaded to take. 'Seek and ye shall find' (and be appropriately rewarded into the bargain) would seem to be the underlying maxim.
Demand-side factors limit take-up of Access to Work, DWA and training opportunities. As Finn (1994) comments, 'High unemployment, discrimination against disabled people and complicated and contradictory rules have restricted take-up of DWA which has failed to provide a realistic route out of welfare dependency' (p. 10). Individual responsibility, consumerism and choice in the context of privatised services, regulated by competition and potentially discriminatory measures of 'success', will not lead to a just distribution of employment opportunities.

Chapter Six

Where now for UK policy?

This paper has distinguished between policies which have a collective aim of promoting employment for disabled people as a group, and those policies which seek to promote the employment of individual disabled people. We must conclude that UK disability policy is weighted heavily in favour of individually-based solutions to employment. The personal right not to be discriminated against is to be supported by individual systems of redress. The system of financial and practical support is targeted at the disabled individual. Placement services are designed to support those disabled people who need special help; otherwise, the disabled jobseeker competes in the market place, aided by training and social security benefits to make the individual competitive. Employers are encouraged to sharpen their recruitment practices and personnel management and recognise that disabled employees contribute to business success.

The state has withdrawn its responsibility to ensure that all sectors of society have a right to work, in favour of promoting opportunities for individual competition; for example, it is argued that 'access to a good education is essential when competing in the jobs market' (Minister for Disabled People, 1995, para. 1.8). Social obligations to disabled people who are not equally productive or 'competitive' will be met by the state through sheltered work and the Supported Placement Scheme. However, as we have noted, state-subsidised disabled employees - in low-paid and low-status jobs - are denied the same right not to be discriminated against.

As well as considering the beneficiaries of policies, we have discussed where responsibility for their implementation lies. We have discerned a change in the role of government away from policing and enforcing the law. Now, in persuading - rather than obligating - receptive employers to take on disabled people, and simultaneously making individuals more competitive, government is acting as 'broker' or 'enabler'. What is more, responsibility for ensuring that employers' practices do change is being devolved to employers' organisations and forums on the one hand, and to disabled individuals with grievances on the other.

A review of policies for disabled people in 15 countries (Lunt and Thornton, 1993) found that most governments had moved away from paternalistic state intervention to policies that encourage independence and individual responsibility. Observable in some European countries were attempts to shift the obligation for the employment of disabled people into the economic domain, as distinct from the state's, and to develop partnership with employers, employees and

organisations of disabled people. In that context, the UK has a strictly limited concept of social partnership in the implementation of policy for the employment of disabled people.

Taking on or retaining disabled workers is not the sole way in which social responsibility to promote the employment of disabled people in general might be met. We have pointed to mechanisms for employers to fulfil their obligations, not by paying penalties but by contributing to a fund which is redistributed for the greater benefit of disabled people in education, training and employment. In Canada, and elsewhere, employers are legally obliged to plan for better integration. In Sweden, there is a general legal obligation to ensure that work and workplaces are not disabling environments.

Can a new right against discrimination stand alone?

In the UK, anti-discrimination legislation stands alone as disabled people's only legal protection in employment, and there are no legal obligations on employers, other than those associated with the employment of particular individuals. As we know of no other countries where anti-discrimination legislation operates in such isolation, we can only guess at any broader effects that such an individually-targeted policy might have.

Anti-discrimination laws may make employers wary of being found guilty and so look to their recruitment and employment practices. But if such policies are policed only by the individual, there will be less incentive to change. A statutory Code of Practice may mean practices are overseen, but presumably by officials with discretion. An alternative threat is damage to an employer's image (and profits) through being branded a bad employer, as opposed to a 'good' employer who is 'positive about disabled people'. The networks of employers that the government seeks to promote may encourage less compliant members to toe the line.

Campaigners, whether in the low pay or the disability lobby, have consistently argued for a composite policy which might include an assortment of forms of statutory protection. In 1981, in response to yet another threat to dismantle the quota scheme, Lonsdale wrote:

> Statutory protection can take a number of forms ranging from positive discrimination such as the quota scheme, to anti-discrimination legislation such as that which applies in the case of race and sex, to various statutory rights and obligations on workers and employers. With regard to the disabled, all these forms should be available in order that a range of different circumstances are covered. Primarily, that means retaining the present quota scheme while modifying and strengthening it. (p. 11).

Barnes, ten years later, makes a similar point in the context of the demand for comprehensive anti-discrimination legislation which 'establishes a suitable framework to enforce policies ensuring the integration of disabled people into the mainstream economic and social life of the community, such as the employment quota scheme' (1991, p. 232).

The difficulties of reconciling quota systems with anti-discrimination legislation have not been recognised, however. Anti-discrimination legislation means being treated equally; the quota scheme means being treated unequally. The UK quota scheme required below quota employers to hire a registered disabled person in preference to a non-disabled applicant. The employer must discriminate in favour of the disabled person. Anti-discrimination laws, on the other hand, seek equal treatment of disabled and non-disabled applicants. If applicants are equally able to do the job, given appropriate accommodation, there is no scope for discriminating in favour of one or the other.

Comparisons with the USA are often used to promote civil rights legislation in the UK. However, the USA is currently experiencing serious tensions between affirmative action programmes, involving quota schemes for women and black and minority ethnic groups, and principles of equal rights and equal treatment, leading to protestation by white males of unfair discrimination against them.

It is a contradiction to argue for a combination of rights against discrimination in employment and a quota scheme such as that in the UK. When people argue for the quota, they may be championing particular elements: for example, the requirement to count the number of disabled people in one's employ; or sanctions against an employer who fails to comply. They may have different aims in mind: an incentive to employers; redressing past discrimination against disabled people; or ensuring a 'fair share' of employment for disabled people.

There are, as we have shown, other ways of meeting those ends which do not have the drawbacks of the UK quota scheme. There is no reason not to have targets, but targets can be worked towards by a range of means, not just preferential hiring. What may be required is a mechanism for ensuring that employers keep records of the proportion of disabled employees, so that the incentive effect imputed to the quota system is not lost. That might be policed as part of a statutory code of practice, or by an Equal Opportunities Commission with rights of investigation.

An alternative might be employment equity programmes. Companies over a certain size would have an obligation to register their equal opportunities policies and monitor their practices. A proposal for such a scheme was submitted by BCODP as written evidence to the House of Commons Employment Committee Inquiry, 1994 (pp. 50-51). An annual statement might include targets for recruitment and retention. Difficulties should be noted so that advice can be given. Such a legal document would be open to public scrutiny. Employment equity programmes have the added appeal of, in theory at least, promoting the employment of sub-groups, such as people with learning difficulties. How employment equity programmes are enforced is another question. The BCODP evidence suggested withdrawal of permission to register and a period for improvement. Failing that, the company would be fined and publicly de-registered.

Contract compliance is often cited as a policy (Law Society, 1992; Commission on Social Justice Commission, 1994; Massie, 1994). It is not a policy, but a mechanism for ensuring that policies are put into practice. The Commission on Social Justice (1994) proclaims that:

> The USA has demonstrated the potential of contract compliance procedures to deliver maximum effect for minimum intervention ... Contract specifications can ensure that good practice in terms of racial equality, gender and disability becomes the norm ... We would, therefore, like to see government supplement anti-discrimination laws with contract compliance throughout the public sector (p. 195).

Evidence from Canada is less encouraging. The general view of Canadian legislators has been that voluntary compliance with the Federal Employment Equity Act 1986 is likely to be more easily achieved than through punitive measures (Neufeldt and Friio, 1995). Despite the limitations to the legislation, Neufeldt and Friio argue, it serves to measure practice and, as the banks and communications media covered are highly visible, the measures they take to remove barriers or improve opportunities serve to heighten awareness.

Practices may be monitored from within the organisation, as well as from without. With the shift from public towards increased private responsibilities, and a corresponding shift in the balance of power, there may be a new role for the 'consumers' of employment (Strümpel, 1995). We have already noted the lack of involvement of employees' organisations and disabled people themselves in the implementation of UK policy. A model from Germany which is rarely referred to is the disabled person's representative. Where more than five members of staff are severely disabled, a representative is elected to monitor the firm's adherence to provisions which favour disabled people and to advise disabled employees. The representative has a right to organise a meeting of severely disabled workers at least once a year, and employers should consult the representative when determining whether vacant jobs or training places might be suitable for disabled people.

The disabled people's movement and employment policy

The trend in disability employment policy, from collective to individual solutions, in many ways parallels recent changes in academic thinking and writing about the nature of disability and society's response to disabled people. Disabled writers and activists reject patronising and charitable images, deny professional judgements of what disabled people 'need', and argue for individual control over how resources are spent in order to maximise independence. There have been constant calls for individual rights, and demands that individuality and choice be recognised.

We should be wary of confusing independence with individual responsibility. Recent Government policy documents promoting the independence of disabled people have smuggled into the discussions notions of individual responsibility. The challenge is to reconcile this

emphasis on rights and individualism with collective responsibility for promoting employment opportunities for all sectors of society. Returning specifically to the new right not to be discriminated against in employment, we might query the adequacy of setting the employer's duty and obligation in opposition to the individual's rights and responsibilities. In such a formula, in the absence of sanctions, the employer cannot discharge an obligation to disabled people as a whole but only to the potentially aggrieved individual. Such a 'privatisation' of rights and corresponding responsibilities could prove a limiting factor in any discrimination legislation. Disability theory and its policy agendas have to consider how to reconcile opportunities and independence, without setting one person against the other.

More fundamentally, there is work to be done to understand how discussions of individual responsibility and social obligation relate to individual and social constructions of disability. There is a danger of becoming so preoccupied with individual responsibility that we return by a circular route to the individual as the locus of 'problems'.

If disabled people and their organisations are to make a substantive contribution to the formulation of future UK disability employment policy, they must reflect that, if policies relate only to individuals, the opportunity to reduce the number of people disabled by their working environment is severely limited. As RADAR (1993) reports, many people with impairments need flexibility in the organisation of work tasks and time schedules, such as regular breaks, or flexible hours.

Barnes is one of the few disabled writers to emphasise tackling the workplace and the social organisation of work. Rejecting supply side policies, he advocates policies focusing primarily on the demand side of labour, namely on the workplace: 'policies creating a barrier-free work environment and requiring employers to use production processes accessible to the entire workforce, policies aimed at the 'social organisation of work" (Barnes, 1991, p. 97). In the absence of such policies, unequal access to employment opportunities will remain a reality for most disabled people in the UK.

Appendix

Table A1
Disabled Persons (Employment) Acts 1944 and 1958:
levels of quota compliance in Great Britain

Year	Number and % of employers fulfilling their quota as at 1 June		Number and % of employers below quota as at 1 June but issued with permits in the previous 12 months		Average % of registered disabled people (staff units*) employed by employers with a quota obligation
1961	40,206	(61.4)	n/a	n/a	3.0
1964	35,489	(54.8)	15,479	(23.9)	2.8
1965	35,232	(53.2)	18,510	(27.9)	2.7
1966	33,915	(51.7)	19,662	(30.0)	2.6
1967	31,156	(47.7)	21,228	(32.5)	2.6
1968	29,584	(46.3)	21,021	(32.9)	2.4
1969	28,152	(44.5)	20,647	(32.6)	2.4
1970	27,168	(42.7)	22,150	(34.9)	2.3
1971	26,155	(41.8)	21,534	(34.4)	2.2
1972	25,385	(42.2)	25,875	(43.0)	2.1
1973	24,089	(41.6)	25,554	(44.2)	2.1
1974	22,107	(40.0)	23,030	(41.8)	2.1
1975	20,747	(39.1)	21,611	(40.7)	1.9
1976	19,632	(38.1)	21,353	(42.1)	1.8
1977	18,696	(37.1)	21,703	(43.0)	1.7
1978	17,744	(36.8)	21,785	(45.2)	1.7
1979	17,045	(35.3)	22,412	(46.4)	1.6
1980	16,340	(35.1)	22,001	(47.2)	1.5
1981	14,734	(33.6)	21,183	(48.4)	1.4
1982	13,468	(31.8)	19,796	(46.8)	1.3
1983	11,755	(31.4)	18,536	(49.5)	1.1
1984	11,130	(30.3)	18,769	(51.2)	1.1
1985	9,980	(28.1)	18,681	(52.7)	0.9
1986	9,021	(26.8)	18,840	(56.0)	0.9
1987	8,329	(25.3)	18,577	(56.4)	0.9
1988	7,736	(23.8)	18,594	(57.3)	0.9
1989	7,276	(22.8)	18,530	(58.0)	0.9
1990	6,606	(21.8)	18,036	(59.4)	0.8
1991	6,172	(20.4)	17,649	(58.2)	0.7
1992	5,889	(19.3)	15,871	(52.0)	0.7
1993	5,525	(18.9)	16,684	(57.0)	0.7

Note: * A disabled worker counts for one unit if working for a minimum of 30 hours per week, half a unit for work between ten and 30 hours per week and zero units for work of less than ten hours per week

Source: House of Commons Employment Committee, 1994

Table A2
Private sector beneficiaries of the quota scheme by year

Year*	Number of units**
1980	216,511
1981	181,984
1982	166,136
1983	143,948
1984	136,402
1985	123,229
1986	116,504
1987	106,743
1988	99,805
1989	95,126

Notes: * For 1985-1987 data cover the UK. For other years, Northern Ireland is not included

** A disabled worker counts for one unit if working for a minimum of 30 hours per week, half a unit for work between ten and 30 hours per week, and zero units for work of less than ten hours per week

Source: Grammenos, 1992, vol II, Table 25

Table A3
Average percentage registered disabled employees by type of public body in Great Britain, 1 June 1993

Type	Percentage	Highest % cited
County Councils (England & Wales)	0.6	2.0
District Councils (England & Wales)	1.1	7.0
London Boroughs	0.9	3.0
Regional Councils (Scotland)	0.7	1.5
Island Councils (Scotland)	0.9	1.0
District Councils (Scotland)	1.2	4.6
Regional Health Authorities (England)	0.5	1.1
Health Boards (Scotland)	0.1	0.6
District Health Authorities (England & Wales)	0.3	3.2
National Health Service Trusts (England, Scotland & Wales)	0.3	3.2
Nationalised Industries & Public Authorities	0.7	1.0

Source: *Employment Gazette,* August 1994, pp. 292-297

Table A4

Disabled Persons (Employment) Acts 1944 and 1958: registered disabled people

Year	Number registered at the time of the Annual Count (April)
1946	482,221
1947	784,796
1948	887,780
1949	914,693
1950	936,196
1951	906,008
1952	883,352
1953	856,612
1954	839,210
1955	827,102
1956	798,279
1957	764,446
1958	737,043
1959	715,825
1960	691,724
1961	666,454
1962	656,402
1963	653,362
1964	655,878
1965	658,925
1966	654,483
1967	655,379
1968	654,788
1969	654,545
1970	634,336
1971	620,691
1972	610,107
1973	597,305
1974	574,640
1975	557,217
1976	543,064
1977	532.402
1978	497,877*
1979	482,006
1980	470,588
1981	460,178
1982	447,259
1983	433,177
1984	420,475
1985	404,170
1986	389,273
1987	383,439
1988	374,238
1989	366,768
1990	355,591
1991	368,276
1992	372,089
1993	371,734

Note: *31,464 1914-18 war disability pensioners with residual rights to remain on the register ceased to be included in the annual count of the register from 1978 onwards

Source: House of Commons Employment Committee, 1994

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