

UK NATIONAL REPORT



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1. Legal framework on equal treatment for persons with disabilities in employment.

- **What is the general legal framework on non-discrimination in employment for persons with disabilities in your country?**
- **What are the legal sources on non-discrimination on the ground of disability and for the promotion of (re)integration of a person with disabilities in general and especially at work in your country? (e.g., constitution, legislation, case law).**

In the United Kingdom, the legal governance framework of persons with disability in the workplace is primarily governed by the Equality Act 2010 (EQA).¹ In the absence of a clearly defined written constitution, this piece of legislation establishes clear obligations for employers and characterises disability as a protected characteristic.

Pursuant to section 6 (1), “A person (P) has a disability if - (a) P has a physical or mental impairment, and (b) the impairment has a substantial and long-term adverse effect on P's ability to carry out normal day-to-day activities.”² It is evident from this that the provision provides a rather broad scope, ensuring that individuals experiencing significant barriers due to their condition receive adequate protection.

Disability discrimination is prohibited under the application of the normal equality legal framework, which bans both direct and indirect discrimination, as well as harassment and victimisation. However, the law provides additional protections for individuals with disabilities through two specific provisions - sections 15³ and section 20⁴. Section 15 exists to further strengthen these safeguards by prohibiting discrimination arising from disability. This signals that employers cannot treat employees unfavourably because of something connected to their disability. As a means to mitigate these risks, sections 20 to 22⁵ impose a duty on employers to make reasonable adjustments. Consequently, this ensures that disabled employees are not placed at a disadvantage in the workplace. These adjustments could encompass alternative working hours, assistive technology, physical modifications to the workplace, or reassignment to a different position where necessary. The inability for employers to provide reasonable adjustments can lead to a legal action for disability discrimination, reinforcing the notion that disabled employees should be empowered rather than excluded from the wider workforce. This is seen in section 6, as illustrated above. The answers to questions 3, 4, and 5 of this report explore this in greater detail.

The Equality Act 2010 also promotes the integration of disabled individuals in the workplace. Section 146 provides a Public Sector Equality Duty – it ensures that public sector employers

¹ Equality Act 2010.

² Equality Act 2010, s 6.

³ Equality Act 2010, s 15.

⁴ Equality Act 2010, s 20.

⁵ Equality Act 2010, ss 20-22.

have ‘due regard’ to equality matters.⁶ At the same time, section 159 also allows for positive action in recruitment and promotion, further discussed in questions 3 and 7 of the report, enabling employers to give preference to disabled candidates in a tie break situation where they are equally qualified.⁷ These legal provisions emphasise the Act’s broader objective of boosting overall workplace inclusion, rather than only preventing discrimination.

In addition to the EQA, further employment protections exist under the Employment Rights Act 1996.⁸ This legislation protects employees from unfair dismissal, which is precisely relevant in cases where disability is a factor. If an employer dismisses an employee due to their disability without first considering reasonable adjustments, this may amount to both unfair dismissal and disability discrimination. Some examples of this are covered in question 5 of the report. The wording of section 98, which references “capability” is particularly relevant in this scope, as it implicitly considers that an employee’s ability to perform their role may be affected by a disability. As a result, any dismissal on this ground must be justified and supported by an investigative assessment of possible accommodations. In deciding on whether a dismissal is fair, the Employment Tribunals apply the “band of reasonable responses” test.⁹ This assesses whether a reasonable employer, in the same circumstances, could have made the decision to dismiss. If an employer fails to explore reasonable adjustments before dismissing an employee with a disability, their decision may fall outside this band. Consequently, this makes the dismissal unfair. The Tribunal will consider factors such as the extent of the employee’s disability, the feasibility of adjustments, and whether the employer followed a fair process, including consultation and alternative role considerations.

Human rights also play a role in moulding the legal framework. The Human Rights Act 1998¹⁰ incorporates the European Convention on Human Rights (ECHR)¹¹ into UK law. Broadly, this Act compels public authorities, together with specific employers, to protect fundamental rights. It is also worth noting the significance of Article 14,¹² which prohibits discrimination in the enjoyment of other Convention rights. Despite Article 14 not existing as a standalone right, it is triggered upon the purported breach of another provision, such as Article 8 – “everyone has the right to respect for his private and family life, his home and his correspondence”.¹³ UK courts have recognised that workplace policies and dismissals affecting disabled employees could engage both Article 8 and Article 14, particularly when linked to issues such as employment-related benefits under Article 1 of Protocol 1 – the right

⁶ Equality Act 2010, s 146.

⁷ Equality Act 2010, s 159.

⁸ Employment Rights Act 1996.

⁹ *ibid.*

¹⁰ Human Rights Act 1998.

¹¹ European Convention on Human Rights (ECHR) (adopted 4 November 1950, entered into force 3 September 1953) ETS 5.

¹² Human Rights Act 1998, Art 14.

¹³ Human Rights Act 1998, Art 8.

to enjoy one's property peacefully.¹⁴ Regardless of these human rights protections being commonly cited in employment discrimination claims, UK courts tend to fall back more heavily on the EQA upon adjudicating on workplace disputes in the disability sphere.

International and European legal instruments also contribute to disability law in the United Kingdom. The UK has ratified the UN Convention on the Rights of Persons with Disabilities (UNCPRD),¹⁵ committing to promoting and protecting the rights of disabled individuals, including within employment. Despite the ratification, however, international law is not directly applicable in the UK, due to a dualist system. Thus, the EQA remains the main source of rights for persons with disability. Furthermore, the EU Directive 2000/78,¹⁶ establishes a framework for equal treatment in employment, prohibits disability-based discrimination, and requires employers to make reasonable accommodations for disabled workers. The provisions in the directive are found in the EQA and still remain in place, despite Brexit.

Landmark caselaw further provides guidance on the scope of employers' responsibilities towards disabled employees. There are significant number of cases on the definition of disability and what constitutes reasonable accommodation (as later developed in questions 2 and 6). In the UK case of *Archibald v Fife Council*,¹⁷ the court ruled that employers must take proactive steps to accommodate disabled workers, such as offering alternative employment in a very far-reaching way. In the past, European cases had also been influential, in terms of expanding on the meaning of disability - *HK Danmark (C-335/11)*¹⁸ - but this may no longer be the case given Brexit. In *HK Danmark*, the Court of Justice of the European Union (CJEU) established that "disability" covers physical, mental, or psychological impairments that hinder full and effective participation in professional life. Specifically, the judgment affirmed that an illness, whether curable or incurable, could qualify as a disability if it meets these criteria and is long-term. It is highly worth noting here that the CJEU did not definitively establish a timeframe for what constitutes "long-term," indirectly leaving the burden and discretion of this on national courts within the UK. The UK's withdrawal from the European Union is also worth analysing here. Brexit has introduced a high degree of legal uncertainty regarding the continued application of CJEU jurisprudence in domestic disability discrimination law. While pre-Brexit rulings, such as *HK Danmark*, hold persuasive authority, UK courts are no longer obliged to follow them and may progressively diverge in their application. This dynamic legal landscape necessitates careful scrutiny, as it may lead to a reconfiguration of employers' responsibilities and employees' rights in the context of workplace disability accommodations.

¹⁴ Protocol No 1 to the Convention for the Protection of Human Rights and Fundamental Freedoms, art 1, opened for signature 20 March 1952, ETS 9.

¹⁵ United Nations Convention on the Rights of Persons with Disabilities (UNCPRD), opened for signature 30 March 2007, 2515 UNTS 3.

¹⁶ Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation [2000] OJ L303/16.

¹⁷ [2004] UKHL 32.

¹⁸ *HK Danmark v Dansk Industri (C-335/11)* [2013].

Prior to Brexit, UK courts commonly referred to *HK Danmark* when interpreting disability discrimination cases, specifically when assessing the currency and immediacy in which an employee must be disabled to remain protected. A case that followed *HK Danmark* and demonstrated its influence in the UK within this sphere, is *Chief Constable of Norfolk v Coffey*.¹⁹ Whilst giving the ratio decidendi, the Tribunal reinforced the need for a broad interpretation of disability discrimination, deciding that an individual does not need to be 'currently' impaired in their ability to work for disability protections to apply. The case was regarding a police officer whose job application was dismissed due to a perception that her hearing condition might wane in the future. The Tribunal also found this as direct discrimination based on a purported disability, enforcing that the law protects individuals from unfair treatment in the workplace - even when their condition does not 'presently' limit their professional capacity. The case was persuasive in guiding Employment Tribunals on whether conditions such as inconsistent illnesses or mental health disorders fell within the remit of disability protections.

Prior to Brexit, UK courts frequently aligned with the CJEU's broad approach, making sure that individuals with chronic but variable conditions were not unfairly excluded from being legally protected.

2. Definitions of the persons with disabilities

- **In your national law, do you have one or more definitions of disabled people? In which fields of law are these definitions applied? Do you have a specific definition in labour law?**
- **If your national law does not have a specific definition, what other source does your law refer to (UN Convention, Directive 2000/78....)?**
- **What is the position of your national law in relation to the concept of disabilities developed by the Court of justice?**

The statutory definition of a disability in the UK is contained under section 6 of the Equality Act 2010, which requires that an individual has a physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal daily activities.²⁰

The word "substantial" is interpreted as anything greater than de minimis – in other words, anything more than minor or trivial. Additionally, "long-term" refers to conditions that have lasted or are expected to last at least 12 months.²¹ The apparent broadness of this definition ensures an accommodation of a wide range of impairments which could possibly fall within the scope of legal protection. The advantage of this on disabled employees and on wider access to justice aims of UK legal protection, is the appreciation of both visible and non-visible

¹⁹ [2019] EWCA Civ 1061.

²⁰ Equality Act 2010, s 6.

²¹ Gov.uk, *Definition of Disability under the Equality Act 2010* <<https://www.gov.uk/definition-of-disability-under-equality-act-2010>> accessed 14 February 2025

impairments when adjudicating on such sensitive matters. As an example, in *Goodwin v Patent Office*,²² the Tribunal ruled that mental health conditions such as paranoid schizophrenia, are considered disabilities, despite their non-visibility to the human eye. It is also worth noting that certain conditions, such as cancer, multiple sclerosis, and HIV, are automatically considered disabilities under schedule 1 of the EQA.²³ *Metroline Travel Ltd v Stoute*²⁴ reinforced this principle but also clarified that not all medical conditions automatically qualify as disabilities. In this case, the Employment Appeal Tribunal ruled that type 2 diabetes, when controlled by diet alone, did not have a substantial adverse effect on daily activities and therefore did not meet the definition of a disability under the Act. This highlights that while some conditions are automatically recognised, others require an assessment of their impact on daily life. Additionally, in further emphasising the broadness of the UK's approach, the case of *Walker v Sita Information Networking Computing Ltd*²⁵ requires expansion on as well. It was ruled that multiple conditions, even without a given single medical diagnosis, could still be classified as a disability. This ruling brought weight to the "effect, not cause" interpretation, which presents that it is the 'effect' of a disability in the context of employment which matters, not the causes which flow from the disability.

It is important to discuss at this point the role of case law in expanding on this definition, by considering that disability is not solely a question of medical diagnosis but must also be understood in light of societal barriers. In *HK Danmark*, the CJEU ruled that a disability exists when an impairment, in combination with external obstacles, restricts an individual's participation in professional life²⁶. While UK courts have shown an awareness of this broader framework, acknowledging the role of workplace structures in shaping the impact of impairments and, by extension, the scope of legal protection, its formal adoption in UK law remains uncertain.

The next consideration is acknowledging that the distinction between curable and incurable illnesses has been a point of debate in disability law. Notwithstanding that UK law does not explicitly consider this issue, the decision in *HK Danmark* enforces that an illness can constitute a disability if it leads to significant workplace limitations and is long-term. This approach denotes a divergence from solely medical definitions of disability, which centre on diagnosis, to instead greater functional assessments of an individual's condition on their daily life²⁷.

Cumulatively, these legal provisions showcase the United Kingdom's approach to safeguarding disabled individuals in labour law. Through enforcing direct obligations on employers and appreciating the gravity of societal barriers, the legal framework enhances

²² [1999] IRLR 4.

²³ Equality Act 2010, Sch 1.

²⁴ [2015] UKEAT 0302_14_2601, [2015] IRLR 465.

²⁵ [2013] 2 WLUK 272.

²⁶ *HK Danmark* (n 18)

²⁷ *ibid*.

inclusivity and creates an environment where disabled employees are not inadequately disadvantaged in the workplace. There still exists some difficulty of applying disability law in practice and the proceeding sections of this report consider this in more depth.

3. Equal treatment in the recruitment stage

- **Do particular national rules address barriers for persons with disabilities to be recruited?**

In the UK employers are required to follow fair recruitment and selection processes. Regardless of there being no set guidance by law on what a recruitment process must entail, candidates are protected under the Equality Act 2010 (EQA)²⁸ against any form of discrimination²⁹.

The EQA section 39.1 states that:

- 1) An employer (A) must not discriminate against a person (B)
 - (a) in the arrangements A makes for deciding to whom to offer employment;
 - (b) as to the terms on which A offers B employment;
 - (c) by not offering B employment.³⁰

As such, it is considered unlawful to make recruitment decisions linked with direct or indirect discrimination. The EQA Statutory Code of Practice outlines the best practice employers should follow when advertising vacancies, constructing job descriptions and person specifications as part of the application process³¹. The language used by employers must be inclusive, for example, job titles should not contain bias, and the job advertisements must be non-discriminatory in their content that may lead to discouraging candidates from applying because of a disability³². It is employers' responsibility to put measures in place preventing unfavourable treatment in the recruitment and selection process. For example, deliberately refusing a disabled person an offer of employment despite them being most suited for the vacancy would likely be classed as disability related discrimination³³.

Additionally, further to the reference in question 1, section 39.5 of the EQA states:

- 5) A duty to make reasonable adjustments applies to the employer³⁴.

This statutory duty takes effect where a disabled person is at 'a substantial disadvantage in comparison with a non-disabled person' due to:

- (1) a provision, criterion, or practice ('PCP') adopted by the employer;

²⁸ Equality Act 2010.

²⁹ ACAS, *Recruitment: Following Discrimination Law* (29 October 2024) <<https://www.acas.org.uk/hiring-someone/follow-discrimination-law>> accessed 23 January 2025.

³⁰ Equality Act 2010, s 39.1.

³¹ Richard Kidner, *Blackstone's Statutes on Employment Law* (first published 1988, OUP 2023) 438-439.

³² *ibid* 439-441.

³³ Ian Smith and Owen Warnock, *Smith & Wood's Employment Law* (16th edn, OUP 2023) 287.

³⁴ Equality Act 2010, s 39.5.

- (2) a physical feature if the employer's premises, or
- (3) the failure to provide an auxiliary aid³⁵.

To tackle barriers that the disabled persons may face, employers would be expected to make adjustments at an interview stage, for instance, by holding an interview in a wheelchair-accessible room or allowing disabled candidates more time for an interview test³⁶.

Occupational requirement

The EQA contains an exemption allowing employers to set specific criteria that individuals must meet that otherwise would fall under direct discrimination. Part 1 schedule 9 permits it where an employer can demonstrate 'a requirement to have a particular protected characteristic', such as sex, age, religion or disability³⁷. However, it must be genuine and proportionate and in line with legitimate interests of the business, for example:

'An organisation for deaf people might legitimately employ a deaf person who uses British Sign Language (BSL) to work as a counsellor to other deaf people whose first or preferred language is BSL'³⁸.

In the UK, alongside the provisions outlined in the EQA, supporting guidance around disability related discrimination are outlined by the Advisory, Conciliation and Arbitration Service (ACAS). ACAS, as an independent public government-funded body, is particularly useful in clarifying rules of employing persons with disabilities, including measures that employers would put in place to prevent discriminatory practices in recruitment and selection processes³⁹. It is also noteworthy that public authorities in the UK must comply with the Public Sector Equality Duty (PSED) set to eliminate discrimination and advance equality of opportunity for persons with disabilities⁴⁰. Overall, the UK law, rules and regulations, subject to complying with the EQA, seeks to reduce barriers for persons with disabilities and allow positive action towards 'less favoured groups'⁴¹.

- **Is there case law on a situation where an employer did not engage a person on basis of disability?**

Recent case UK law highlights challenges employees face, arguably, due to lack of understanding of disability.

³⁵ David Cabrelli, *Employment Law in Context: Text and Materials* (4th edn, OUP 2020) 507.

³⁶ ACAS, *Recruitment: Interviewing Job Applicants* (29 October 2024) <<https://www.acas.org.uk/hiring-someone/interviewing-job-applicants>> accessed 11 February 2025.

³⁷ Equality Act 2010, sch 9, s 1.

³⁸ Equality Act 2010, sch 9, para 787.
<<https://www.legislation.gov.uk/ukpga/2010/15/notes/division/3/16/26#:~:text=787.,discrimination%20in%20relation%20to%20work>> accessed 25 January 2025.

³⁹ ACAS, *Recruitment: How Employers Should Recruit* (29 October 2024) <<https://www.acas.org.uk/hiring-someone>> accessed 28 January 2025.

⁴⁰ Equality Act 2010, s 149.

⁴¹ Smith and Warnock (n 31) 257.

Withdrawing offer of employment

In *Farrow v Foster and Foster Clay Law Ltd*⁴² the Employment Tribunal held that the employer subjected Mrs. Farrow to discrimination arising from disability by ending the recruitment process after being informed of excessive sickness absence with previous employers, despite knowing the candidate's health condition requiring adjustments. Similarly, the discrimination arising from disability claim in *Birtenshaw v Oldfield*⁴³ was upheld finding that the employer failed to reasonably assess the disabled candidate's unsuitability for the role resulting in an unjustified withdrawal of the job offer.

Failure to make reasonable adjustments

Arguably, a person's condition cannot always be clearly recognised as a disability. Notwithstanding the presence of information allowing to identify that a person is disabled due to certain commonly recognised disabilities⁴⁴, there have been cases where employers fail in their duty to make reasonable adjustments⁴⁵. The *Government Legal Service v Brookes*⁴⁶, Ms. Brookes, an applicant with Asperger's syndrome, successfully claimed discrimination arising from disability and failure to make reasonable adjustments for being refused an amendment to the application process to answer test questions in an alternative format. Additionally, some employers have greeted *Mallon v Aecom Ltd* with concern where the employer was held liable for failure to make reasonable adjustments even when they were not fully aware of the details of the disability due to the candidate's lack of response during the application process.

In light of the above, it could, therefore, be perceived that there is some reluctance from employers in the UK to engage with persons with disabilities seeking employment.

- **Does your law have measures to make it easier /more attractive for employers to engage workers who already have a disability?**

Studies suggest that, on balance, disabled individuals are more likely to undertake lower-skilled occupations or work in part-time jobs predominantly in health, education and retail industries in comparison to the non-disabled⁴⁷.

The Equality Act 2010 positively encourages employers not only invite more applications from under-represented groups, such as disabled persons, but also allows them to provide additional training to the candidates by taking 'positive action' in line with section 159, where an employer would reasonably perceive that:

⁴² [2022] UKET 1806029/2020.

⁴³ [2019] UKEAT 0288_18_1104, [2019] WL 02892916.

⁴⁴ Cabrelli (n 33) 485.

⁴⁵ Kidner (n 29) 260.

⁴⁶ [2017] UKEAT 0302_16_2803, [2017] WL 01552415.

⁴⁷ Aileen McColgan, *Discrimination Law: Text, Cases and Materials* (3rd edn, Hart 2023) 478.

- (a) persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or
- (b) participation in an activity by persons who share a protected characteristic is disproportionately low.⁴⁸

It could be argued that, while the EQA has turned a green light for ‘preferential treatment’⁴⁹ of the disabled by allowing positive action to remove or minimise the disadvantage for persons with protected characteristics, such as disability, it is not without a caveat. Subject to ‘proportionate means of achieving a legitimate aim of the employer’⁵⁰, positive action can be taken subject to only if the disabled person is ‘as qualified as [another person] to be recruited or promoted’⁵¹.

Further details on how employers may utilise positive action measures are discussed in question 7 of the report.

In addition, the aforementioned PSED has also enabled public organisations in the UK to engage in employing persons with disabilities. However, it does not apply to private sector organisations creating somewhat limited understanding as to how private companies could better engage in employing disabled individuals. Moreover, the provisions are, arguably, weak. The duty that public organisations are expected to comply with is limited to simply having ‘due regard to the general equality’ or, in other words, consider what impact their decisions and policies may have on persons with disabilities to eliminate discrimination, but are not necessarily obliged to take any specified action.⁵²

4. Equal treatment as regards employment conditions

- **Does legislation give specific rules for the disabled concerning employment conditions (e.g. access to training or promotion, number of working hours, conditions of productivity, etc).**

In the UK, section 39 of the Equality Act 2010⁵³ states that it is unlawful for employers to discriminate against employees during the course of employment by precluding or refusing opportunities to receive training, access to services, benefits, be promoted or apply for another position⁵⁴.

⁴⁸ Equality Act 2010, s 159(1).

⁴⁹ Smith and Warnock (n 31) 285.

⁵⁰ Smith and Warnock (n 31) 257.

⁵¹ Kidner (n 29) 292.

⁵² Equality Act 2010, s 149.

⁵³ Equality Act 2010, s 39.

⁵⁴ Equality and Human Rights Commission, *Your Rights to Equality at Work: Training, Development, Promotion and Transfer* (May 2014)

<https://www.equalityhumanrights.com/sites/default/files/your_rights_to_equality_at_work_-_training_development_promotion_and_transfer.pdf> accessed 26 January 2025.

Access to promotion

Employers are encouraged to offer people with disabilities opportunities for promotion and career development, such as those that could lead to 'acting up' or secondment opportunities. This generally includes implementing measures to remove or minimise disadvantages and discussing different needs within the workplace⁵⁵.

The approach aims to facilitate career development without bias or assumption about their ability to progress. It entails practices, such as:

- Ensuring that the role does not reference the disabled as unsuitable candidates.
- Ensuring that disabled persons are made aware about all promotion or development related opportunities and that this is done in an accessible format, if required.
- That reasonable adjustments are made at an interview stage⁵⁶.

Access to training

Equally, EHRC Employment Statutory Code of Practice ('Code') sets an approach to training highlighting that any training offer must provide the disabled person with access to training opportunities⁵⁷. This may require employers to adjust timing, training methodology or location to facilitate access to the disabled persons. Failure to make reasonable adjustments or causing 'substantial disadvantage' could lead to unlawful discrimination⁵⁸. Equally, in some cases, it would be practicable to combine various adjustments for a worker with a disability.

Reasonable adjustments

As already mentioned earlier, the EQA⁵⁹ also imposes a duty on employers to make reasonable adjustments for the disabled persons in employment, discussed in more detail in section 6 of the report. When considering equal treatment measures related to employment conditions, it often concerns allowing individuals to work flexible or part-time hours or providing additional breaks to overcome certain disability related symptoms⁶⁰. In more complex cases, it is common practice for employers to consider an alternative job for a disabled person, particularly 'where no reasonable adjustment would enable the worker to continue doing the current job'⁶¹; however, it may not always be objectively reasonable⁶².

⁵⁵ *ibid* 20-23.

⁵⁶ *ibid*.

⁵⁷ Equality and Human Rights Commission, *Employment Statutory Code of Practice* (4 September 2015) <<https://www.equalityhumanrights.com/equality/equality-act-2010/codes-practice/employment-code-practice>> accessed 24 January 2025.

⁵⁸ *ibid* 17-20.

⁵⁹ Equality Act 2010, s 20.

⁶⁰ Equality and Human Rights Commission (n 55) 90-92.

⁶¹ *ibid* 92.

⁶² *Cabrelli* (n 33) 514.

- **Are there examples of discrimination in the case law concerning employment conditions?**

Question 6 discusses various obligations employers in the UK have in order to accommodate individuals with disabilities. However, it is noteworthy that regardless of EHRC providing employers with practical guidance on equal treatment of the disabled persons, there have been instances where discrimination concerning employment conditions has still occurred. *Smith v Churchill Stairlifts*⁶³ is a good example, where after the initial offer of training for the sales job, it was withdrawn after finding out about the candidate's inability to lift and carry heavy objects due to their disability. This case followed the approach of *Archibald v Fife Council*⁶⁴. In this case, the House of Lords highlighted that the statutory obligation to make reasonable adjustments entailed the disabled employee's right to a waived competitive interview and a subsequent transfer to a higher-grade vacancy despite other candidates being more suitable.

In addition, the reasonableness of adjustments related to working location was discussed in *Environment Agency v Rowan*. The Employment Appeal Tribunal found in favour of the claimant upholding that Mrs Rowan, who 'suffered from a deteriorating back injury' was discriminated against due to the employer's failure to make reasonable adjustment of trialing working from home⁶⁵.

- **Are there restrictions for actually implementing law that assists persons with disabilities and for positive actions, such as: Are employers allowed to ask the disability status of job applicants? Do workers have to disclose their status to their employers in order to benefit from particular rules?**

While employers in the UK are restricted from asking the job applicants about their protected characteristics, it is accepted 'good practice' for an employer to ask a disabled worker about possible adjustments required for the purpose of ensuring that a candidate is not placed at a substantial disadvantage during the recruitment process⁶⁶. While there is no legal requirement, in the UK, that individuals disclose a disability, it is important to note that the employers are bound by the legal provisions once such disclosure is made.

It is worth noting that, as evidenced in common law, if an employer did not know or ought to have known about the employee's disability, the employer may not be held liable for disability

⁶³ [2006] ICR 524.

⁶⁴ [2004] ICR 954.

⁶⁵ [2008] ICR 218.

⁶⁶ ACAS, *Recruitment: Following Discrimination Law* (29 October 2024) <<https://www.acas.org.uk/hiring-someone>> accessed 28 January 2025.

discrimination⁶⁷. This is often referred to as "constructive knowledge" in legal terminology. However, it is not straightforward as the courts aim to assess whether the employer would have been expected to simply have known of the facts inferring that the person had a disability⁶⁸.

- **Does your law have measures to make it easier /more attractive for employers to keep their workers who have or develop a disability in employment?**

Arguably, a reasonable proportion of the disabled population is 'untapped' but potentially rich in skills⁶⁹. The provision of rules and guidance available to employers within the Equality Act 2010⁷⁰, EHRC Statutory Code of Practice⁷¹ and ACAS⁷² can help create a diverse workforce that, with the support and provision of reasonable adjustments that the law guides on, could lead to a more resilient and effective workplace⁷³. EHRC Code provides guidance around provision of training and mentoring for the disabled and any other worker making it easier for employers to ensure that disabled employees are supported leading to enabling them to achieve their full potential⁷⁴.

As mentioned in the section above, employers can take voluntary 'positive action'⁷⁵, particularly addressing the needs of the workforce driving their productivity and developmental potential.⁷⁶ Additionally, Access to Work scheme is also available as a government funded scheme that aids disabled persons to enter or remain in work. The scheme supports employers financially and practically by subsidising some or all of the costs related to supporting the disabled in the workplace⁷⁷. However, it has been suggested that the challenge employers have to retain disabled persons is due to unwillingness to disclose a disability which is not currently addressed in law⁷⁸. Notwithstanding this, the employer obligation to ensure equal treatment of persons with disabilities in the workplace remain

⁶⁷ ACAS, *Disability Discrimination: Types of Disability Discrimination* (11 September 2023) <<https://www.acas.org.uk/disability-discrimination/types-of-disability-discrimination>> accessed 22 February 2025.

⁶⁸ *Godfrey v Natwest Market Plc* [2024] EAT 81.

⁶⁹ *Cabrelli* (n 33) 475.

⁷⁰ Equality Act 2010.

⁷¹ Equality and Human Rights Commission (n 55).

⁷² ACAS <<https://www.acas.org.uk/>> accessed 29 January 2025.

⁷³ ACAS, *Supporting Disabled People at Work: Talking About Disability* (10 September 2024) <<https://www.acas.org.uk/supporting-disabled-people>> accessed 26 January 2025.

⁷⁴ *Cabrelli* (n 33) 516.

⁷⁵ Government Equalities Office, *Positive Action in the Workplace* (17 April 2023) <<https://www.gov.uk/government/publications/positive-action-in-the-workplace-guidance-for-employers/positive-action-in-the-workplace>> accessed 29 January 2025.

⁷⁶ Equality and Human Rights Commission (n 52) 20.

⁷⁷ Department for Work and Pensions, *Access to Work: Factsheet for Customers* (16 May 2024) <<https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers>> accessed 25 January 2025.

⁷⁸ Reed in Partnership, *Disability and Employment* (April 2023) <https://www.disabilityrightsuk.org/system/files/paragraphs/cw_file/2023-04/Disability%20and%20Employment%20V7.pdf> accessed 27 January 2025.

consistent irrespective whether the individual had a disability prior to entering employment or whether it developed during the course of employment

5. Equal treatment in the dismissal stage.

- **What obligations does an employer have to retain a worker who develops a disability at work? (This question relates to the general framework of reintegration obligations for those who develop a disability; you do not have to describe the social security aspects).**

It is not uncommon that some employees become disabled during their employment. Employers are expected to take reasonable steps to support a disabled employee to remain in work⁷⁹.

Generally, in cases of a disability after a one-off incident or where health deteriorates over time, a disabled person may require more time off work to manage symptoms, arrange or attend treatment and medical appointments, or recover⁸⁰. Employers should support retention of workers by practices, such as:

- a phased return to work, for example working flexible hours or part-time
- time off for medical treatment or counselling⁸¹

In question 3 a statutory duty to make reasonable adjustments was addressed with reference to not placing a disabled person at a substantial disadvantage due to 'a provision, criterion, or practice' (PCP) of an employer⁸². PCP adopts a wide meaning which can include any informal, formal policies, practices, rules and any arrangements including specific non-recurring actions⁸³. There are rules and guidance provided by EHRC how to ensure that the disabled are not discriminated against in any of these processes. Some of the reasonable adjustments outlined within EHRC Code include:

- Making adjustments to premises.
- Providing information in accessible formats.
- Allocating some of the disabled person's duties to another worker.
- Allowing time off for rehabilitation, assessment or treatment.
- Acquiring or modifying equipment.⁸⁴

⁷⁹ Lorna Adams and Katie Oldfield, 'Opening Up Work: The Views of Disabled People and People with Long-Term Health Conditions' (first published March 2012, Equality and Human Rights Commission).

⁸⁰ ACAS, *Supporting Disabled People at Work: Disabilities that Get Worse* (10 September 2024) <<https://www.acas.org.uk/supporting-disabled-people/managing-a-disability-that-gets-worse-over-time>> accessed 26 January 2025.

⁸¹ Adams and Oldfield (n 77) 60-62.

⁸² Cabrelli (n 33) 507.

⁸³ Equality and Human Rights Commission (n 55) 6.10.

⁸⁴ Cabrelli (n 33) 516.

The adjustment should constitute a pragmatic outcome; therefore, employers may want to acquire specialist advice from occupational health service or medical specialists. While it is not considered an obligation, additional information would ensure best practice and aid in avoiding claims if the employment reaches its termination stage⁸⁵.

Moreover, employers have an obligation to carry out or review existing workplace risk assessments, particularly upon being informed when a worker acquires a disability⁸⁶. Nevertheless, the adjustment provision may depend on the nature of the business and the disabled employee's role amongst other aspects. As such, employers are not obliged 'to do more' if the adjustment is not classed as reasonable based on circumstances⁸⁷.

- **What rules apply if an employer wants to dismiss a person with disability or who has developed a disability?**

As already noted in question 1, when it comes to dismissal of a disabled person, it is vital to ensure that a fair procedure has been followed. If a person cannot perform work and there are no reasonable adjustments that would help them stay in work, an employer may consider terminating employment on the grounds of capability⁸⁸. Otherwise, the employer risks a disability discrimination claim⁸⁹.

ACAS guide on 'Discipline and Grievances at Work' refers to general principles to follow to ensure fairness of the capability process. It involves meeting an employee, of which one would have to be informed in writing with supporting allegations and evidence. To ensure transparency and integrity, before a decision to terminate is reached, during the meeting an employee should:

- be informed of any potential formal sanction or risk of terminating employment.
- provided with supporting evidence.
- have a right of representation.
- provided with an opportunity to put their statements across for consideration.
- receive an explanation of any sanction and be provided with a right of appeal⁹⁰.

⁸⁵ ACAS, *Occupational Health: Using Occupational Health at Work* (5 January 2023) <<https://www.acas.org.uk/using-occupational-health-at-work>> accessed 27 January 2025.

⁸⁶ Health and Safety Executive, *Employers' Duties in Protecting Disabled Workers* <<https://www.hse.gov.uk/disability/risk-assessment.htm>> accessed 28 January 2025.

⁸⁷ Health and Safety Executive, *Making Reasonable Adjustments* <<https://www.hse.gov.uk/disability/adjustments.htm>> accessed 28 January 2025.

⁸⁸ ACAS, *Supporting Disabled People At Work: Capability and Performance* (10 September 2024) <<https://www.acas.org.uk/supporting-disabled-people/capability-and-performance-when-someone-is-disabled>> accessed 28 January 2025.

⁸⁹ Equality and Human Rights Commission, *Avoiding Unlawful Discrimination When Dismissing a Worker* (19 February 2019) <<https://www.equalityhumanrights.com/equality/equality-act-2010/dismissal-redundancy-and-retirement/avoiding-unlawful-discrimination-0>> accessed 28 January 2025.

⁹⁰ ACAS, *Acas Guide to Discipline and Grievances at Work* (26 July 2024) <<https://www.acas.org.uk/acas-guide-to-discipline-and-grievances-at-work>> accessed 28 January 2025.

An employer may justify a dismissal of a disabled worker subject to being able to evidence that the person is unable to continue work despite removing all possible barriers with no suitable alternative employment opportunities⁹¹. Regardless of this, an employer may be required to evidence that the person's absence has a significant impact on the business and the person no longer meets the requirements for the job. This is generally supported by medical evidence showing that the person is not likely to return to work within a reasonable timescale and that the employer cannot reasonably continue to support such a high rate of absence⁹².

- **Can these constitute forms of discrimination? Is there any case law on this?**

While the previous section outlined a process where dismissing a disabled person can be justified, the dismissal itself must be 'within the range of reasonable responses'⁹³. In *Brightman v Tiaa Ltd*, where the employee was dismissed on the grounds of ill-health capability, the Employment Appeal Tribunal held that the dismissal relied on medical information of little relevance leading to employer's a fear of potential continuous sick leave without adequate grounds to support it⁹⁴.

The courts, as evidenced in case law, often assess the direct disability discrimination based on a notion of a comparator to the disabled person, the effect of which is evidenced in *Bennett v MiTAC Europe Ltd*⁹⁵ and *Chief Constable of Norfolk v Coffey*⁹⁶. It highlights that employers are liable in associative discrimination cases when the claimant is associated with a person with a disability and, as such, to a level of incapability, regardless of having acquired it. The decision to dismiss should therefore be an informed one relying on relevant medical and other records. In *O'Brien v Bolton St Catherine's Academy*⁹⁷ disregarding a medical report and 'fit note' claiming the individual was fit to work with likelihood of full recovery led to a successful unfair and discriminatory dismissal on the grounds of disability. A claim could even be successful notwithstanding if the causal link between unfavourable treatment and a disability is known as in *York City Council v Grosset*⁹⁸. The court referred to it being 'wise to look into the matter more carefully before taking unfavourable action'⁹⁹, specifically dismissing the employee. Additionally, some cases demonstrate that within employer's reasonable responses prior to a decision to dismiss could be a delay in such decision due to a

⁹¹ ACAS, *Reasonable Adjustments* (30 January 2025) <<https://www.acas.org.uk/reasonable-adjustments>> accessed 10 March 2025

⁹² *ibid.*

⁹³ Smith and Warnock (n 31) 345.

⁹⁴ [2021] UKEAT 0318_19_0207, [2021] WL 02754518.

⁹⁵ [2019] EWCA Civ 1061, [2022] IRLR 25.

⁹⁶ [2020] UKEAT/0255/19/VP, [2020] ICR 145.

⁹⁷ [2017] EWCA Civ 145, [2017] ICR 737.

⁹⁸ [2018] EWCA Civ 1105, ICR 1492.

⁹⁹ *ibid* [47] (Jackson LJ).

prospect of reorganisation and an alternative job becoming available, as seen in *Cairns v The Royal Mail Group Ltd*¹⁰⁰.

6. Obligations of employers

- **Does your law have any measures to make it easier /more attractive for employers to engage workers who already have a disability?**

Statistically, people with disabilities are almost twice as likely to be unemployed compared to people without a disability¹⁰¹. This is why it is so important to have measures in place that make it easier/more attractive for employers to engage workers who already have a disability. In the UK there are measures in place to make it more attractive/easier for employers to engage workers who have a disability. This is demonstrated by the requirement on the employer to follow a fair recruitment and selection process, and the encouragement from the Equality Act 2010 (EQA) to provide additional training as outlined above in question 3. There is the government's Access to Work scheme, which provides financial support to employers and employees to help disabled workers overcome practical barriers by providing funding for practical support. This includes adaptations to vehicles so the employee can get to work, physical changes to the workplace, and support workers such as a British Sign Language (BSL) interpreters, making it easier for employers. However, this grant cannot be used to cover the cost of reasonable adjustments that the employer is legally obliged to implement (see below).

There is also a Disability confident scheme¹⁰², which is supported by the UK government (although not a legal requirement): it encourages employers to recruit, retain, and develop disabled employees. The scheme makes it more attractive for employers and involves three levels of certification and gives the employer the opportunity to become disability confident, helping lead the way in their community, but also fulfill their potential and increase team success¹⁰³.

¹⁰⁰ [2024] EAT 129, [2024] WL 03642592.

¹⁰¹ Andy Powell, *Disabled People in Employment* (18 March 2024) <<https://commonslibrary.parliament.uk/research-briefings/cbp-7540/#:~:text=In%20October%20to%20December%202023%2C%20329%2C000%20working%2Dage%20disabled%20people,people%20who%20are%20not%20disabled>> accessed 24 January 2025.

¹⁰² Department for Work and Pensions, *Disability Confident Employer Scheme* (8 July 2014) <<https://www.gov.uk/government/collections/disability-confident-campaign>> accessed 24 January 2025.

¹⁰³ Department for Work and Pensions, *The Disability Confident Scheme* (24 April 2024) <<https://assets.publishing.service.gov.uk/media/6627da5e81fe3e98d1a7e525/disability-confident-scheme-easy-read.pdf>> accessed 24 January 2025.

- **How has the obligation that employers provide reasonable accommodation for persons with disabilities in the area of employment, as required by Directive 2000/78, been elaborated in your law?**

The Equality Act 2010 enacts Directive 2000/78 into UK law. Article 5 of the directive on the duty of reasonable accommodation is found in section 20 of the EQA. Employers must make reasonable adjustments to accommodate employees or job applicants with disabilities. Adjustments may be changes to the building, providing equipment, and changes to policies. If an employer fails to comply, this is considered unlawful discrimination under section 21 of the EQA. Therefore, the directive and the EQA allow for positive discrimination of a worker with a disability¹⁰⁴, as a worker without a disability cannot receive reasonable adjustments. Although an employer is obligated to make these adjustments, the employer must be aware or reasonably expected to know of the disability in order to be obligated¹⁰⁵, and the key idea is that they must be reasonable, and the test for this is an objective one¹⁰⁶.

When considering whether to apply the duty, the Equality and Human Rights Commission (EHRC) Employment Code of Practice highlights some factors to be taken into consideration, these are:

- the extent to which taking the step would prevent the effect in question;
- the extent to which it is practicable for the employer to take the step;
- the financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of his activities;
- the extent of the employer's financial; and other resources;
- the availability to the employer of financial or other assistance; and
- the nature of the employer's activities and the size of his undertaking.¹⁰⁷

- **What constitutes unreasonable accommodation according to your law? Are there guidelines or bylaws in your country that elaborate this?**

Unreasonable adjustment is not defined in UK law but generally refers to any adjustment that would impose a disproportionate burden on the employer. Such unreasonable adjustments are determined by assessing the efficacy, size of the undertaking, and potentially what the employer and similar employers have spent in the past¹⁰⁸. Employers are also not expected to make adjustments that result in an unreasonable cost¹⁰⁹. There are no specific bylaws or comprehensive guidelines for unreasonable accommodation, but the EHRC provides

¹⁰⁴ *Archibald v Fife Council* [2004] IRLR 651 (HL).

¹⁰⁵ *Secretary of State for Work and Pensions v Aslam* [2009] UKEAT/0242/09.

¹⁰⁶ *British Gas Services Ltd v McCaull* [2001] IRLR 60, (EAT).

¹⁰⁷ *Smith and Warnock* (n 31) 346.

¹⁰⁸ *Cordell v Foreign and Commonwealth Office* [2012] ICR 280.

¹⁰⁹ *Corry v Merseyrail Electric 2002 LTD* [2015] ET/2400795/2015.

guidance for employers on implementing reasonable adjustments (as seen above), an example would be making adjustments to the work premises such as providing a ramp¹¹⁰.

- **Are you aware of collective agreement provisions or case law?**

Collective bargaining is mainly done at enterprise level in the UK, so finding out information about what is in collective agreements is not feasible. The content of collective agreements is also not really regulated in the UK and there is no obligation to bargain on equality matters, including disability.

Many cases have arisen on the issue of reasonable adjustments: what constitutes reasonable adjustments, in particular what is considered reasonable and how far an employer should go. The case of *Archibald*¹¹¹, establishes that employers have quite an extensive duty to consider reasonable adjustments for employees with disabilities, and that this could even involve changing the nature of their role. This case also highlights that in cases of discrimination on the ground of disability, some positive discrimination is permitted, in this case this was providing a higher-level role without a competitive interview when the employee was unable to do the job they were originally employed to do. One of the key questions is how much an employer should pay for a reasonable adjustment. *Cordell v Foreign & Commonwealth Office*¹¹² highlights that the resources available, expenditure on other staff, and benefits delivered are considered to establish whether an adjustment is reasonable. Reasonable adjustments that may also be offered is pay protections, and the case of *G4S Cash Solutions (UK) Ltd v Powell*¹¹³ demonstrates this and shows that an employee with a disability can keep the same salary whilst conducting lower paid work that does not conflict with their disability, this is because the legislation is described as being there to keep employees with a disability in work. The court has gone further to offer this protection and as a result of the case of *Griffiths v Secretary of State for Work and Pensions*¹¹⁴ when it helps disabled employees stay in work, they can be treated more favorably in terms of the number of sick absences they can take.

- **Are there good practices of accommodations made for persons with disabilities?**

Many employers have implemented good practices in accommodating workers with disabilities, particularly those who are disability confident leaders, such as The University of

¹¹⁰ Equality and Human Rights Commission, *Examples of Reasonable Adjustments in Practice* (19 February 2019) <<https://www.equalityhumanrights.com/guidance/business/employing-people-workplace-adjustments/examples-reasonable-adjustments-practice>> accessed 11 February 2025.

¹¹¹ *Archibald* (n 17)

¹¹² [2011] UKEAT/0016/11/SM

¹¹³ [2016] UKEAT0243/25.

¹¹⁴ [2015] EWCA Civ 1265, [2016] IRLR 216.

Leicester¹¹⁵. Some examples include flexible work arrangements, job coaching or mentoring programs, and inclusive recruitment policies.

- **Does your law provide for remedies in case the obligation to provide reasonable accommodation for persons with disabilities has not been complied with? Is there case law? Are there proposals from NGO's and other interest organisations (such as those for persons with disabilities, equality bodies, or trade unions)?**

If an employer fails to make reasonable adjustments, the employee would have been subject to a type of discrimination called 'failure to make reasonable adjustment' under section 21 of the Equality Act 2010 (EQA). As discussed in question 9, employees who have been discriminated against can seek a remedy and have sanctions imposed on the employer. In the UK there is a time limit to bring a claim to the Employment Tribunal, the claim must be brought within 3 months from when the discriminatory action was done, or 3 months after the action ended if continuous over a period of time. Remedies for breach of the EQA include a declaration of infringement of the employee's rights, an order for compensation for loss of earnings, and injury to feelings including potential damages for failure to provide adjustments, and a recommendation that the employer takes the actions suggested by the Tribunal within a specified time frame to remove the discrimination¹¹⁶.

In addition to these individual remedies, the EHRC can ensure the statute is being complied with. The EHRC is an 'independent statutory body with the responsibility to encourage equality and diversity, eliminate unlawful discrimination, and protect and promote the human rights of everyone in Britain'¹¹⁷. Its role includes the enforcement of equality legislation. It has the power to carry out formal investigations, and if their findings show breaches of the EQA then an unlawful act notice will be issued. The EHRC can enter legally binding agreements to resolve the situation, take action against discriminatory advertisement, and give help and advice to bring discrimination claims against employers.

The organisations that represent people with disabilities include the Disability Charities Consortium (DCC)¹¹⁸ which is made up of members such as Disability Rights UK and Mencap. The DCC sets out what they want to see change and provide solutions to overcome the disadvantages faced by persons with disabilities. As well as providing plans and solutions, the

¹¹⁵ Department for Work and Pensions, *Employers That Have Signed up to the Disability Confident Scheme* (2 November 2016) <<https://www.gov.uk/government/publications/disability-confident-employers-that-have-signed-up>> accessed 24 January 2025.

¹¹⁶ Smith and Warnock (n 31) 295 and see question 9 on remedies which are the same whichever form of discrimination for persons with disabilities under the Equality Act 2010.

¹¹⁷ Equality and Human Rights Commission, *Who We Are* <<https://www.equalityhumanrights.com/about-us/who-we-are>> accessed 17 February 2025.

¹¹⁸ Mencap, *What is the Disability Charities Consortium (DCC)?* <<https://www.mencap.org.uk/get-involved/campaign-mencap/our-work-parliament/disability-charities-consortium>> accessed 7 March 2025.

members of DCC protest for stronger protection for people with disabilities and provide resources to workers experiencing discrimination.

So overall, in the UK the Equality Act 2010 requires employers to make reasonable adjustments for employees with disabilities. Failure to comply with the obligations can result in legal action and compensation. There is a significant number of cases on this topic and organisations that can support individuals.

7. Positive action measures

- **Are there quotas in employment for persons with disabilities?**

Positive action measures in the UK are mostly governed by the Equality Act 2010.

The UK does not have quotas for persons with disabilities in employment. However, as outlined in questions 3 and 4 above there are measures that encourage employers to engage workers with disabilities.

- **Has your country's law on positive action measures for persons with disabilities and if so, what does it entail?**

In question 4, the actions that employers in the UK can take to encourage persons with disabilities to take employment related opportunities have been set out as 'positive action'. Disclosing a disability allows the employer to take proportionate actions to support people who share a protected characteristic and suffer from a disadvantage connected to that characteristic¹¹⁹. However, certain rules to ensure that any action is appropriate and supported by evidence apply. Positive action must not be associated with 'positive discrimination' or 'affirmative action' which is unlawful in the UK¹²⁰. Nevertheless, there are further steps employers can take in supporting 'an underrepresented group'¹²¹. In rare circumstances at the offer stage in the recruitment process the candidate with a disability could lawfully be hired over the non-disabled person in a 'tiebreaker' situation. However, the caveat is that the employer must be able to demonstrate the successful candidate is disadvantaged or that such candidate is within the under-represented group in that role¹²².

¹¹⁹ Equality and Human Rights Commission, *Your Rights to Equality at Work: Training, Development, Promotion and Transfer* (May 2014)

<https://www.equalityhumanrights.com/sites/default/files/your_rights_to_equality_at_work_-_training_development_promotion_and_transfer.pdf> accessed 26 January 2025.

¹²⁰ Government Equalities Office, *Positive Action in the Workplace* (17 April 2023)

<<https://www.gov.uk/government/publications/positive-action-in-the-workplace-guidance-for-employers/positive-action-in-the-workplace>> accessed 29 January 2025.

¹²¹ Gov.uk, *Positive Action in the Workplace* (17 April 2023)

<<https://www.gov.uk/government/publications/positive-action-in-the-workplace-guidance-for-employers/positive-action-in-the-workplace#:~:text=This%20could%20include%2C%20for%20example,because%20they%20have%20specific%20requirements>> accessed 10 March 2025

¹²² ACAS, *Recruitment: Using Protected Characteristics* (29 October 2024)

<<https://www.acas.org.uk/hiring-someone/using-protected-characteristics>> accessed 27 January 2025.

Although the Equality Act 2010 (EQA) generally takes a neutral approach to equality, in cases where positive discrimination can address the disadvantage faced, then preferential treatment is permitted, and is known as positive action, and these are measures that encourage equal opportunities. The EQA contains provisions on positive action for persons with disabilities in order to address the specific needs of a person with a disability. The provision provides for targeted recruitment efforts, increased accessibility through adjusting application or recruitment processes, providing training, and flexibility in working hours and workplace adjustment for employees with a disability.

Section 158 of the EQA provides for general positive action, such as career development initiatives and targeted or bespoke training; this permits an employer to take proportionate action to meet the stated aims which are: to overcome the disadvantage, meet the needs, or enable participation for an individual with a protected characteristic¹²³. Therefore, an employer may provide employees with a disability the opportunity to train in work areas or sectors. Section 159 of the EQA permits an employer to overcome the disadvantage faced by an individual and enable participation by treating the individual more favourably more specifically in recruitment and promotion processes, however there are further requirements here, and the individual must be as qualified as the others, and this action is proportionate in addressing the disadvantage, and there is not a policy to treat the group with the protected characteristic more favorably. Therefore, an employer could provide treat persons with disabilities more exclusively, giving them the chance to learn more about particular work opportunities. So, as previously mentioned disabled employees may be treated more favorably than a non-disabled employee without it being direct disability discrimination, this means that an employer may restrict recruitment, training, and promotion to disabled employees in order to achieve the stated aims of overcoming the disadvantage, meeting different needs, or enabling participation for a disabled employee.

- Are best practices and case law on positive action known in your country?

Case law and government guidance, such as the disability confident scheme, have made practices well-established. The Employment Tribunal through its decisions has helped shape this area of law, specifically with reasonable adjustments through cases such as *Archibald*¹²⁴ as discussed above.

- Are positive action measures permitted only for limited grounds of discrimination, including disability, or is there a general derogatory provision authorising unilateral implementation of positive action measures?

In the UK positive action measures are permitted for limited grounds of discrimination, these are known as the protected characteristics listed in section 4 EQA, and include age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion

¹²³ Equality Act 2010, s 158(2).

¹²⁴ *Archibald* (n 17)

or belief, sex, and sexual orientation race. Although the act remains generally neutral, these positive action measures are there to address the disadvantage faced by a person with any of these characteristics, and generally the action must not then cause discrimination against others without the characteristic, however as we have seen above this is sometimes not the case with the disability characteristic.

8. The role of workers' representatives and social dialogue

- **Are workers' representatives informed and consulted on the integration of workers with disabilities in the company?**

As previously noted, under the Equality Act 2010 discrimination at any stage of employment is prohibited based on protected characteristics including disability¹²⁵. The EQA does not explicitly mandate that workers' representatives are informed and consulted regarding the integration of persons with disabilities in the workplace. The new Employment Rights Bill 2024 proposes that equality representatives should be consulted on equality matters, but this is not yet law (see below), however, this is not in law yet and still needs to be made official via votes in the Houses of Parliament¹²⁶.

Additionally, ACAS Code of Practice on the topic of time off for trade union duties and activities states that collective bargaining activities for which time off must be given does include equality and diversity¹²⁷.

It is worth noting that trade unions in the UK play a pivotal role in advocating for reasonable adjustments and ensuring employer compliance with disability inclusion policies. Many unions have briefings for their representatives to negotiate or be consulted on policies to increase inclusion of persons with disabilities in the workplace, including assisting them to remain in work¹²⁸. It could also be stated that there are provisions for employee representatives to be consulted on health and safety matters, such as fire escape and other safety elements. This means employers need to now make it more accessible for disabled employees and hence extends to this particular topic.

- **Are there specific bodies representing workers with disabilities within the firm?**

Employers may establish internal diversity and inclusion committees or workplace disability networks to support disabled workers, although this is not mandated by law. Additionally, many trade unions recommend that workplaces have equality representatives. While 'they

¹²⁵ Smith and Warnock (n 31) 4.2.1

¹²⁶ UK Parliament, *Employment Rights Bill* (10 March 2025) <https://bills.parliament.uk/bills/3737> accessed 10 March 2025

¹²⁷ TUC, *The role of the Equality Rep* <<https://www.tuc.org.uk/sites/default/files/2024-10/equality-workshop-presentation.pdf>> accessed 20 February 2025.

¹²⁸ UCU, *Negotiating and Bargaining with and for Disabled Workers* https://www.ucu.org.uk/media/11813/Negotiating-and-bargaining-for-disabled-workers---campaign-information-large-print/pdf/Negotiating_and_bargaining_for_disabled_workers_-_campaign_information_large_print.pdf> accessed 20 February 2025.

may differ from union to union' they would 'perform some or all of the following functions in the workplace:

- Provide information and advice about equality matters to members
- Represent employees on equality issues
- Help promote the value of equality in the workplace
- Challenge instances of discrimination or harassment in the workplace and ensure that complaints are dealt with effectively and efficiently
- Seek to negotiate with employer's policies and procedures that advance equality and do not lead to one group being disproportionately disadvantaged'.¹²⁹

The new Labour government is planning to take action to promote diversity in the new Employment Rights Bill of 2024 by providing a new statutory right for trade union equality representatives to take time off during the employee's working hours for the following purposes:

- Carrying out activities for the purpose of promoting the value of equality in the workplace.
- Arranging learning or training on matters relating to equality in the workplace.
- Providing information, advice or support to qualifying members of the trade union in relation to matters relating to equality in the workplace.
- Consulting with the employer on matters relating to equality in the workplace.
- Obtaining and analysing information on the state of equality in the workplace.¹³⁰

The Bill therefore introduces measures that would grant equality representatives time off to promote diversity¹³¹, signalling a potential shift in legal obligations. This law, if passed, is anticipated to have effect in 2026.

- **Are there any collective agreements that promote the inclusion of persons with disabilities?**

While the Equality Act 2010 does not mandate collective agreements specific to disability and inclusion, employers may voluntarily negotiate agreements at the company. These agreements may include provisions for reasonable adjustments, flexible working arrangements, and anti-discrimination training for staff.

¹²⁹ TUC, *The role of the Equality Rep* <<https://www.tuc.org.uk/sites/default/files/2024-10/equality-workshop-presentation.pdf>> accessed 20 February 2025.

¹³⁰ UK Government, *Factsheet: Trade Unions in the Employment Rights Bill* <<https://assets.publishing.service.gov.uk/media/6712634d8a62ffa8df77b39c/trade-unions.pdf>> accessed 20 February 2025.

¹³¹ UK Government, *Factsheet: Trade unions in the Employment Rights Bill* p.3-4 <<https://assets.publishing.service.gov.uk/media/6712634d8a62ffa8df77b39c/trade-unions.pdf>> accessed 18 February 2025.

The TUC, which is the umbrella organisation for all trade unions in the UK suggests that the following items can be considered for collective bargaining for equality (in general and not necessarily only disability):

- 'Actively contribute to the creation of equality strategy for a joint union and employer workplace equality forum.
- Monitor the implementation of policies designed to promote equality.'¹³²

Collective agreements exist primarily at the enterprise level so the coverage of the collective bargaining is low in the UK, especially in the private sector as just under 30% of employees had their terms and conditions negotiated by a union¹³³. It is therefore difficult to have access to those collective agreements.

9. Remedies, procedures, and sanctions.

9.a. Remedies against discrimination.

- **Does an individual worker have judicial means to combat discrimination on the basis of a disability at work? Does an individual worker have judicial means to combat any rights connected with disability (proper working conditions to particular disability)?**

Workers who face discrimination due to their disability can seek legal remedies under the Equality Act 2010. They can bring a claim at the Employment Tribunal, seeking a declaration, compensation or reinstatement if they have been dismissed. This needs to be done within 3 months of the act to which the complaint relates or three months after the last act if the discrimination is over a long period of time¹³⁴. The Employment Tribunal has some discretion to extend that time limit. The grounds for discrimination generally are:

- Direct and indirect discrimination claims.
- Harassment.
- Victimisation claims.
- Failure to make reasonable adjustments claims.
- Discrimination arising out of disability.

¹³² TUC, *The role of the Equality Rep* <<https://www.tuc.org.uk/sites/default/files/2024-10/equality-workshop-presentation.pdf>> accessed 20 February 2025

¹³³ Statista, *Proportion of Employees Whose Pay and Conditions were Agreed in Negotiation between the Employer and a Trade Union in the UK from 1996 to 2023* <<https://www.statista.com/statistics/287297/uk-collective-agreement-coverage/#?text=Collective%20agreement%20coverage%20in%20the%20UK%201996%2D2023%2C%20by%20sector&text=In%202023%2C%20around%2068%20percent,decrease%20over%20this%20time%20period>> accessed 18 February 2025

¹³⁴ Equality Act 2010, s 123

- **What are the sanctions against employers for discrimination on the grounds of disability?**

If the Employment Tribunal finds that an employer has discriminated against a worker based on disability, it may award the claimant with following remedies:

- Declaration in a form of a formal statement that the worker's rights have been infringed.
- Compensation, which covers financial losses, injury to feelings.¹³⁵
- Recommendations, providing that the Tribunal may recommend specific actions the employer must take to remove the discriminatory effects¹³⁶.

There is no cap on the compensation awarded for discrimination claims making this a more significant financial risk for employers compared to unfair dismissal claims, which have a statutory cap.

- **Does an individual worker have non-judicial means to combat his/her discrimination on the basis of a disability at work (a non-judicial procedure may include an internal complaint body or person of the company, the possibility to address labour inspectorate; asking assistance or advice of an association)?**

There are a variety of approaches in which workers can take for a non-judicial means to combat their discrimination within the workplace. These may involve internal grievance procedures within the company such as bringing the matter up at staff and board meetings, in most cases, good communication should be sufficient to help produce a solution. Another potential approach is through trade unions and disability advocacy groups, which can be utilised to put pressure on firms to invest in equipment or new policies which reduce inequality. Further means of endeavour include complaints to the EHRC, who can investigate systemic discrimination., along with referral to the Advisory, Conciliation and Arbitration Service (ACAS), which offers mediation and conciliation¹³⁷.

- **Who has to prove discrimination in case of conflict?**

Under section 136 of the Equality Act 2010, the burden of proof initially lies with the complainant. However, once the claimant presents the facts from which the Tribunal could infer discrimination, the burden shifts to the employer to prove that there was no unlawful discrimination. The burden of proof in discrimination cases follows the reverse burden of proof principle¹³⁸. This reversal is a crucial element in discrimination law, ensuring that employees do not have to provide exhaustive proof of discriminatory intent.

¹³⁵ Equality Act 2010, s 119

¹³⁶ Equality Act 2010, s 124

¹³⁷ ACAS <<https://www.acas.org.uk/>> accessed on 10 March 2025.

¹³⁸ Smith and Warnock (n 31) 289-292

For example, in *Igen Ltd v Wong*¹³⁹ the Court of Appeal established that once a claimant provides sufficient facts from which discrimination could be inferred, the burden is on the employer to provide an adequate non-discriminatory explanation. This principle was later reaffirmed in *Efobi v Royal Mail Group Ltd*¹⁴⁰, where the Supreme Court clarified, that claimants do not need to disprove all potential explanations but must demonstrate that discrimination was a plausible factor.

9.b. External assistance to persons with disabilities

- Are there mechanisms to support access to justice for persons with disabilities?

Persons with disabilities can access justice through Employment Tribunals, legal aid, and specialised advisory services¹⁴¹. NGOs, trade unions, and legal support organisations may also offer assistance.

While legal aid schemes exist, their availability for employment disputes is limited. Additionally, a lack of awareness regarding their rights and procedures can prevent the disabled workers from seeking justice. Efforts by NGOs and trade unions aim to bridge these gaps by providing free legal advice, advocacy, and educational resources.

- Assistance from the EHRC, which provides guidance and can intervene in cases. This body specifically deals with equality issues¹⁴².
- Support from NGOs, such as Disability Rights UK¹⁴³ and Scope¹⁴⁴, which provide legal advice and advocacy.

There are generic initial assistance / advice services available for most employment law issues, including equality:

- Assistance from ACAS which provides individual initial advice.¹⁴⁵
- Assistance from the Citizen Advice organisation.¹⁴⁶

¹³⁹ [2005] EWCA Civ 142

¹⁴⁰ [2021] UKSC 33

¹⁴¹ Smith and Warnock (n 31) 4.2.12

¹⁴² Equality and Human Rights Commission, *Disability Advisory Committee* (13 May 2022) <<https://www.equalityhumanrights.com/about-us/how-we-operate/our-committees/disability-advisory-committee?return-url=https%3A%2F%2Fwww.equalityhumanrights.com%2Fsearch%3Fkeys%3Ddisability>> accessed 9 March 2025

¹⁴³ Disability Rights UK (2025) <https://www.disabilityrightsuk.org/?srsId=AfmBOooe_U3wSrPEACCB9TPcCvZ_6ShdadXA-K74OScgTJ6GvejE1B8n> accessed 09 March 2025

¹⁴⁴ Scope (2025) <<https://www.scope.org.uk/>> accessed 26 February 2025

¹⁴⁵ ACAS, *Discrimination and Bullying* (18 February 2025) <<https://www.acas.org.uk/discrimination-and-bullying>> accessed 26 February 2025

¹⁴⁶ Citizens Advice, *Equality Advisory Support Service discrimination helpline* (2025) <<https://www.citizensadvice.org.uk/law-and-courts/discrimination/check-if-youre-protected-from-discrimination/equality-advisory-support-service-discrimination-helpline/>> accessed 28 February 2025

- Trade union representatives if the worker is a union member.
- **Do NGOs play a role in this?**

NGOs which have been mentioned above such as Scope UK, disability rights UK, along with trade unions, all play a crucial role in supporting workers with disabilities by:

- Providing legal representation in Employment Tribunal cases.
- Raising awareness through campaigns and lobbying.
- Engaging in strategic litigation to set legal precedents.
- Therapy: Therapy is necessary for the physiological as well as the psychological needs of people with physical limitations.
- Scholarships.
- Vocational Training.
- Encouraging Peer Support and Community Building.
- **Are associations, organizations, and trade unions entitled to act in support of victims of discrimination before adjudication bodies or courts?**

In addition to the above, trade unions and organisations supporting disabled workers can intervene in cases and provide legal assistance¹⁴⁷.

- **Is there a special organization that can give advice, mediate, or decide on cases of alleged discrimination of persons with disabilities?**

The EHRC (Equality and Human Rights Commission) serves as the main statutory body handling disability discrimination complaints. The EHRC has the power to provide guidance, investigate systemic discrimination, and take legal action against employers who fail to comply with equality laws. The EHRC has faced criticism for inconsistent enforcement and resource limitations. While the EHRC has successfully intervened in key cases, such as supporting claimants in disability discrimination claims, critics argue that its enforcement powers are underutilised¹⁴⁸.

- **Are there limitations for instituting legal action in employment matters?**

There are strict time limits for bringing employment claims: a claim must generally be brought within three months of the alleged discrimination. Tribunals may extend the time limit if it is just and equitable¹⁴⁹. The current Employment Rights Bill 2024 is proposing that this time limit is extending to 6 months.

¹⁴⁷ Smith and Warnock (n 31) 4.2.12.4

¹⁴⁸ Equality and Human Rights Commission (4 September 2015) <<https://www.equalityhumanrights.com/>> accessed 10 March 2025.

¹⁴⁹ Smith and Warnock (n 31) 4.2.12.1

The lack of proactive enforcement mechanisms means that workers often bear the burden of initiating legal action, which can be costly and time-consuming. Strengthening oversight and ensuring that employers comply with their legal obligations more effectively remain key areas for improvement. Trade unions, NGOs, and the EHRC play a critical role in assisting individuals, promoting best practices, and ensuring they are not ignored in the workplace. Saying this however, there is always room for improvement, especially in world which is constantly evolving.