
A TUC briefing for unions
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Disabled People fighting the cuts

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Summary

Disabled people are being hit in every aspect of life by the cuts imposed by the coalition government. But a fightback is taking place. Thousands of disabled people joined the TUC March for the Alternative on 26 March, and thousands took part in the Hardest Hit march and rally on 11 May, the largest demonstration by disabled people for decades. There were then national weeks of action highlighting the role of ATOS healthcare in administering the Work Capability Assessment (WCA) with protests in London, Bristol, Truro, Manchester, Cambridge, Nottingham, Edinburgh, Liverpool, Glasgow, Cardiff and other places, and, on October 22, rallies organised by the Hardest Hit coalition with TUC support in many cities.

Unions need to understand the multiple impacts of the cuts on this community, and to ensure both that these attacks on disabled people are challenged by unions, and that trade union campaigns reach out to, and link up with, campaigns led by disabled people.

This briefing first presents an overview of the impact of cuts already made and others in preparation, and then proposes ways in which unions can participate in the challenge.

Part 1: the extent and impact of the attack

Many groups are suffering particularly badly from the impact of the Government's cuts, especially women and some ethnic minority communities. Disabled people are members of all these communities, but additionally face dramatic impacts in all the areas of life where disability has an effect, whether they are

working or not. The government trumpets the areas where their changes bring benefits to disabled people: but welcome though they are, it is a small minority who gain compared with the negative effects on the great majority.

- Employment of disabled people is suffering from public sector job cuts;
- But at the same time the changes to the benefit system and to welfare to work programmes and disability employment programmes, designed to save money, are penalising many disabled job seekers, and the position will get worse with the Welfare Reform bill now in Parliament and the threatened withdrawal of funding from Remploy businesses;
- For the millions of disabled people reliant on benefits, because they cannot work even with adjustments, or are no longer of working age, changes to the benefits regime are taking place that will inevitably lead to increased poverty for a group of people already among the poorest in society;
- The cuts in the National Health Service affect many groups, but disabled people with particular impairments face significantly reduced provision, such as mental health services;
- Cuts in public services elsewhere will impact on the ability of disabled people to participate in society;
- Reductions in transport subsidies may impact on progress towards making public transport accessible to more disabled people and is already reducing rural transport services;
- The government's propaganda in support of its benefit reductions plans has led to a tabloid campaign against "benefit scroungers" and a surge in disability hate crime has resulted, while cuts to police budgets threaten to turn back progress in challenging such attacks.

Looking at each heading in more detail:

Employment

Between 1998 and 2008, there was a continuous increase in the proportion of disabled people in work, and for the first time nearly 50% of working age disabled people were in paid employment. Massive job losses resulted from the economic recession that began in 2008, but for the first time ever, statistics showed that – in contrast to all previous recessions – disabled people had not been made redundant proportionately more than their non-disabled colleagues.

The TUC suggested that one reason for this was that a higher proportion of disabled people had found work in the public sector, which was more disability-friendly than the private sector, and it was the private sector that had taken the brunt of closures and redundancies in the recession.

With hundreds of thousands of public sector jobs now lost or about to be lost over the next few years as a result of the cuts, the threat to disabled people's jobs is immediate. Figures for April-June 2011 show the employment rate for people who meet the Equality Act definition of disabled dropping back from 49% to 48% (while the non-disabled rate remained steady at 77%) (source: Labour Force Survey).

The role of trade unions in ensuring that public sector employers make the reasonable adjustments they are required to consider to minimise the impact of redundancies on disabled workers will be critical, but nonetheless thousands of disabled workers are losing their jobs.

There are detrimental impacts at many levels for disabled workers even when jobs are not being cut.

...my partner came to visit me (in hospital) and told me, his job was being cut. I just thought, Oh, I am just going to have to go back into work full time and I am not fit enough to do that, because I am in a lot of pain...

Unison member

...due to budget cuts now I have not been able to get the ICT support that I require... I am concerned that further changes (to the structure of the school day) will mean I can no longer work full time... this inflexibility would mean an end to me being able to manage my condition (CFS)

successfully..(but) reducing my hours to part time would not be feasible.. financially... because most of my part-time wage would be spent on nursery costs.

EIS member

Employment programmes

The government has announced that it will follow the recommendation of the Sayce review of specialist disability employment programmes. If this happens, several thousand workers in supported employment such as in the Remploy factories will lose their jobs. Many of these workers are severely disabled and it is highly unlikely they will succeed in finding alternative employment, especially when the economy remains stagnant.

Access to Work is a government programme that has enabled thousands of disabled workers (37,000 in 2009/10) to secure or remain in work by funding workplace adaptations, travel to work, support workers or other costs that would have prevented the recipient from working. Despite the fact that AtW earns more for the state (through tax) than it costs to provide the grant, its budget remains small, and recent changes have reduced the range of adaptations it will now fund. The government says it will only increase the funding by diverting the money that keeps Remploy workers in jobs: an approach that the trade union movement finds disgraceful, divisive and inhumane.

Benefit changes

This section looks at the introduction of Employment Support Allowance, the Work Programme and the proposed replacement of DLA by PIP.

The last government had begun the process of abolishing Incapacity Benefit, and moving people onto Employment Support Allowance or, if they were found fit to work, the much lower rate Job Seekers Allowance. The present government has taken this still further. The operation is presented as an attempt to get disabled people out of poverty and into work, without penalising those who cannot work. If this were true, it would be a good

objective – but the reality is that the objective is a big reduction in the benefits bill, as the government itself states.

Here is a summary of the TUC's response:

- The review carried out by Professor Harrington found that the process of deciding whether someone was fit for work (the Work Capability Assessment – WCA) was flawed, evidenced by the high success rate (40% - rising to 70% when the claimant was represented) of appeals against the assessments made by ATOS Healthcare. The government undertook to reform the process as a result – but there is no evidence of any real change. Its very nature makes it questionable whether (for example) fluctuating conditions such as many mental health conditions will be accurately assessed. The consequence of a wrong decision is a loss of income as well as the stress of the process. There are heart-rending stories of people with terminal cancer found fit for work, medical evidence being ignored, and some attempting suicide as a result of the process.
- Even if every single person found fit for work by the WCA were able to start work, the government's argument ignores the reality of the economic situation. With five applicants for every vacancy (on average) what chance does anyone with an impairment that affects work, or who lacks a history of recent employment, have of being taken on?
- The programmes designed to assist disabled people into work have been merged into a single *Work Programme*. This is being run by private and voluntary sector organisations that will be paid by results. Concern arises from the weakness of the safeguards for those who will take part (in some cases, under compulsion).
- Quite apart from the competition for jobs, it is also known from surveys that many employers discriminate against disabled applicants. This is illegal – but ignorance of the law, combined with an employer's fear of possible costs and anxiety about productivity all add up to a mountain to climb for so many

people with both physical and mental impairments, reinforced by the fact that Office for National Statistics figures show that disabled people (often because of earlier exclusion within the education system) are only half as likely to have qualifications.

- The government has argued that its proposed abolition of Disability Living Allowance (DLA) and its replacement by PIP (Personal Independence Payment) by 2014/15 is about ensuring that disabled people receive the right amount of support. No one objects to the suggestion that applying for DLA/PIP should be simpler. But DLA was designed in recognition of the fact that on average, it costs 25% more to be a disabled person. The government's argument is shown to be false by the announcement in the budget that the reform is intended to save a billion pounds. The only way to achieve this saving is for thousands of disabled people who currently rely on DLA to lose out.
- The government proposes to regularly test people's eligibility for PIP – where it is obvious that the impairment will not change, this is both wasteful and stressful.
- The government proposes to extend the waiting period for receiving the benefit from the current three months to six months. This will be potentially devastating for anyone without savings.
- The proposal that caused the greatest anger was that of withdrawing the mobility element of DLA from people in residential care – the small payment that enables people in care the occasional trip outside the home. The minister retreated in the face of the outcry and set up the *Low Review* to examine it. The review has concluded (October 2011) that

If the rights of disabled people are to be preserved then it is vital that DLA Mobility, and its successor under PIP, are retained for people living in residential care.

(from the Executive Summary; www.thelowreview.org)

- There are other changes to benefits accessed by disabled people as well: the establishment of a new Universal Credit to replace a number of out of work benefits, child tax credits for disabled children, and Carer's Allowance (which may be subject to other, so far unspecified, changes) will all have a negative effect especially on households with a disabled child or adult requiring support.
- Cuts in benefits administered at a local level are also adversely affecting disabled people: the cap on housing benefit payment will hit many disabled people living in cities such as London and force them out of their homes.

Hate crime and the police

Ever since the government began to seek support for massive reductions in the benefits bill, tabloid newspapers have whipped up a disgraceful campaign focussing on fraudulent claimants, in which disabled people who are unable to work have become subject to public rage, culminating in a wave of hate crime directed at disabled people who are accused of being scroungers.

The government has denied any such intention, but the link between the two is evident.

At the same time, the slow progress that was being made in achieving an effective multi-agency approach to disability hate crime in which the front line role of the police and criminal justice system is critical, now face the threat of cuts in these services as well.

The National Health Service

I am a wheelchair-user (with) rheumatoid arthritis. They are cutting staff at the hospital where I'm monitored. Used to be an appointment every three months, now it's every six...

Unison member

Despite government assurances to the contrary, the NHS is already facing significant job losses and reorganisation that will impact badly on disabled people who use health services both as members of the general public, and as users of specific services. To take the one example of mental health services, these are being reduced all over the country: ward closures and job losses (at least 6,300 or 20% of staff according to FalseEconomy) in 53 mental health services, and deep cuts in community mental health teams are progressively reducing the service available to the many people who rely on them. At the same time, many local authorities have closed day centres and drop-in centres (for example, Nottingham, Leeds, Dorset, Shropshire, Staffordshire, Peterborough) and other mental health projects (Southend, Andover, Manchester...). The progress only recently made to link up employment and health service teams to support and enable those with mental health issues towards recovery, and return to work, is being undone before it has really begun, through the slashing of the resources needed to make it happen.

Local authority services and grants

Disabled people are among many groups facing reductions in services provided by local authorities, but the impact of the sweeping reductions being made to social service departments across the country, including the closure of day centres so important in the lives of their users, is enormous. Disabled people's organisations relying on council funding are being hit, so weakening both service delivery and the voice of local communities. False Economy (as of August 2011) reported cuts in grants to 151 disability-related and 112 adult care charities. Local authority services cover many different areas important to disabled people including transport (see below). Different cuts are being made in each local authority area, but disabled people will be badly hit whichever service is reduced.

Housing

In addition to some disabled people facing the consequences of the cap on housing benefit imposed in the 2010 budget, the Supporting People programme, which has paid for the services that have enabled many disabled and elderly people (as well as other groups needing such support) to continue to live independently, has also been severely affected by cuts.

Legal Aid

The government plans both to cap legal aid payments, and to restrict the type of case that can be funded by it, while funding for advice agencies such as Citizens Advice Bureaux and law centres is also under threat. The ability of disabled people along with other citizens to obtain advice on how to secure their legal rights is being curtailed just at the time when they will need it most – and because disabled people are amongst the poorest, they will suffer even more than everyone else.

Transport

Absence of accessible transport has long been a barrier for many disabled people being able to travel, including being a sometimes insuperable obstacle to being able to get a job. Steady improvements had been taking place with more accessible trains, buses and taxis coming into use. Now, reductions in ticket office staff (and therefore opening hours and having staff assistance available) such as those being implemented by Transport for London and London Midland trains will reverse this progress. Rural bus services are being reduced as local authority subsidies are cut, leaving many disabled people stranded. Taxicard journeys are being reduced in some areas, including London and Aberdeenshire. In London, Camden council has withdrawn its free pass for mental health service users.

Part 2: fighting back

Unions in the workplace

Defending disabled members: making use of legal rights

Using the Equality Act

Workers who meet the Equality Act 2010 definition of disability are legally entitled to protection from discrimination alongside all the groups similarly protected (discrimination is illegal on grounds of gender, race, age, sexual orientation, gender reassignment, religion or belief as well as disability). But in addition, disabled people also have a right to require the employer to consider *reasonable adjustments* to create a level playing field. In effect, this duty means that employers may have to treat a disabled worker *more favourably* than a non-disabled worker, if this is necessary in order to achieve an equal outcome.

Redundancy and redeployment

This applies to the selection processes used in redundancy and redeployment situations. There is advice on how to ensure that disabled members are not unfairly treated in a redundancy process in the TUC guidance, *Disability and Work* (revised edition 2011), and in detailed advice from the Equality and Human Rights Commission's *Code of Practice on Employment*. If an employer decides to use criteria such as absences or productivity or length of service, they run a serious risk of breaking the law if they have not adjusted their criteria to exclude (for example) absence due to disability, as recommended in the Code of Practice.

It has become well established in the courts (following the case of *Archibald v. Fife Council* – see *Disability and Work*) that redeployment of a disabled worker to a different position, even one on a higher grade, is a legitimate reasonable adjustment. Where disabled members are at risk of redundancy, therefore, unions need to know that employers have lost cases at Employment Tribunals when they have failed to move the disabled person to a vacant position elsewhere in the organisation, even if such a move requires additional support and

retraining. The larger the employer, the less likely it is they can argue that it is not practicable.

Unions will need to be careful that they do not accidentally become complicit in discrimination by agreeing to discriminatory redundancy and redeployment procedures as unions also have legal obligations not to discriminate against disabled people.

Public sector equality duty

If the employer is in the public sector, then in addition to being subject to the same requirements as every other employer under the general provisions of the Equality Act, they are also liable to the requirements of the *public sector equality duty* (PSED). The element of this most likely to assist unions in negotiating effectively is that an employer is obliged to pay *due regard* to the need not to discriminate against any of the groups of people protected by the Act, to advance equality of opportunity for those groups (which includes addressing under-representation and meeting different needs) and to foster good relations (which includes promoting positive attitudes). In order to demonstrate that they have paid such regard, they would have to produce evidence of having done so when preparing their plans and policies. This used to be called the duty to carry out an *equality impact assessment*. The present government has decided that this duty will no longer feature on the face of the law – but an employer who has not assessed the impact of their actions on those who are affected, and cannot demonstrate that they have done so, and that they actively considered how to mitigate any negative effects, is at risk of legal challenge, which is carried out by the process of judicial review. So despite the weakening of the terms of the law the PSED remains a potent instrument available to unions in the public sector, and it has already been deployed successfully in several high court JR cases against local authorities.

Unions and the community

Trade unions are taking the lead in mobilising and organising resistance to the government's attacks on public services and following the great success of the national demonstration on 26 March, the focus has switched to organising at a local level.

Disabled people also began to organise themselves and coordinating campaigns such as *Disabled People against the Cuts* have successfully mobilised support for activity across the country and provided a link between groups and individuals. Their website is a valuable source of information and opinion (www.dpac.uk.net). From October 2011, DPAC constituted itself as an organisation with full membership rights for disabled people – union members can join it through its website. DPAC has taken the lead in mobilising against the WCA assessments that are carried out for the government by ATOS Healthcare.

The *Hardest Hit* march, rally and lobby of Parliament on 11 May was the first such national demonstration organised by disabled people themselves for decades, and signalled both the willingness of many disabled people to become active around the cuts, and to link up with allies. Many disability charities actively promoted the march, and delegations were present from many trade unions.

Local joint actions have been taking place across the country. Work organised jointly by trades councils, anti-cuts campaigns and disability activists is the model for effective cooperation.

Many more people supported the Hardest Hit campaign than were present in person at the events: and the reasons for this need to be grasped by those campaigning against the cuts. A lot of mobility-impaired supporters could simply not get to London, because local trains can only carry a limited number of wheelchair users at a time. Many others, relying on benefits, simply could not afford the cost of travel.

On October 22, rallies were organised by Hardest Hit in towns and cities across the country, with the active support of regional trade unions. A message of support from the TUC General Secretary was read out at the rallies.

There are also many well-established disability charities that have come together to challenge the attack on benefits, and in particular the attack on DLA. Forty of them work through the Disability Benefits Consortium, of which the TUC is a member (www.disabilityalliance.org), and which provides news updates and briefings on these issues.

Nothing about us without us: organising inclusive campaigns

Whether working through regional structures or local trades councils or through coalitions of anti-cuts organisations, the TUC urges unions to ensure that the voice of disabled people is heard in every forum campaigning against the cuts – and that it is the voice of disabled people themselves, not that of someone speaking on their behalf.

That voice is too often missing: but with the development of disabled people's own campaigns against the cuts, there is no excuse now for allowing this to continue. The following suggestions may be useful in guiding action:

- The TUC supports a key principle of the disability movement, “nothing about us without us”, and therefore urges that disabled people themselves, particularly if they are representatives of a disabled people's organisation, are invited to deliver the message – in preference to those claiming to speak on their behalf.
- Where the union has a local disabled members' structure, ensuring their involvement may encourage their participation across the union. Where the union does not have such structures, actively promoting inclusive anti-cuts activity may spark disabled members into getting involved.
- When organising local activities, the TUC recommends actively seeking support from disabled people by facilitating their participation. This will mean planning to ensure, at the least, accessible venues and toilet facilities, as well as interpreters, provision for assistance dogs, and induction loops. Making contact with local activists and including them in the planning is the surest way to achieving a properly inclusive activity or event.
- For the reasons already given, many disabled people may not be able to take part in traditional protest activities, because of the barriers preventing them getting there. In response, disabled people have begun to devise alternative ways of

registering their voices, using electronic communication to make their views known. Unions need to consider how to harness the possibilities of modern communications technology to include people who cannot be physically present. In the present period of campaigning, social networking sites using Facebook and Twitter have proliferated and have proved most effective in organising disabled people in protest: these sites are the places to search out disabled activists today.

As this briefing has explained, cuts are affecting disabled people in every area of life. Campaigns will focus on issues that are immediate, and local. Very few of them indeed will not have a disability aspect.

Trade unions can also strengthen themselves by taking up this challenge: never have disabled people so needed the support and solidarity of trade union membership as now. With the role and rights of trade unions under scrutiny, taking an active lead as champions of equality, and of disability equality in particular, will be of benefit to all.

Resources

Disabled people's campaigns

Disabled people against the cuts: www.dpac.uk.net; and

Black Triangle Anti Defamation Campaign in defence of Disabled Peoples' Rights: a campaign running alongside DPAC challenging the defamation of disabled people as "scroungers".

Information on welfare reform

Disability Benefits Consortium: www.disabilityalliance.org

This website links to the sites of all 40 members groups, where each group's own material is to be found. The DBD produced the results of a survey of disabled people, entitled *Benefiting disabled people?*, in Spring 2011.

Trade union advice

Disability and Work is available free of charge from TUC Publications, Great Russell Street, London WC1B 3LS or can be downloaded from the disability pages on the TUC website, www.tuc.org.uk.

Other relevant information

Information on the Equality Act 2010 is also available from the Equality and Human Rights Commission, www.equalityhumanrights.com

The Equality and Human Rights Commission has also recently concluded a thorough formal inquiry into disability-related harassment that provides much evidence for the position of disabled people in Britain today. The report can be accessed at www.equalityhumanrights.com/dhfi