

TUDA News

January 2009

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TUDA AGM

18th April 2009 11-4pm
Venue NCVO, Kings Cross London

BETWEEN A ROCK AND A HARD PLACE
Speakers on Welfare 'reform'
And the need for tougher equality laws.

TUDA MEMBERS AND NON-MEMBER – ALL WELCOME
COME AND JOIN THE CAMPAIGN

It's official! Disabled are more likely to have bad experiences at work

No news to TUDA members but this was the conclusion of the 2008 British Workplace Behavior Survey, published by the Equality and Human Rights Commission. This survey of more than 4 000 workers found that disabled people were more likely to say that they had had bad treatment at work –from bullying and humiliation to physical violence. 27% said that they had been insulted or had offensive remarks made about them; 25% said that they had experienced intimidating behavior from people at work and 12% said that they had suffered actual physical violence at work.

The culture of low expectations was also felt to be a bad problem for many disabled workers. 19% said they were pressured by someone else to work below their level of competence compared to 13.5% of non disabled employees.

At the same time the Government is introducing ever more savage penalties for disabled people who are not in work – even though in many cases this is the result of widespread employer prejudice.

IN THE REST OF TUDA NEWS WE SAY WHAT TUDA IS DOING TO GET THE GOVERNMENT TO MAKE WORK BETTER FOR DISABLED PEOPLE

- Telling the Government what we think about their “Welfare to Work” benefit cuts
- Telling the Government what they need to do to restore disabled people’s rights after the terrible House of Lords decision on disability discrimination
- Giving evidence to Parliamentary Committee for the Department of Work and Pensions on how to improve equality in employment for disabled people

OCTOBER 2008 RESPONDING TO ‘WELFARE TO WORK’ BENEFIT CUTS

This consultation is the latest in a series of Government initiatives to cut welfare support for disabled people. At the same time that Incapacity Benefit is replaced by Employment Support Allowance (ESA), a benefit whose real value will be eroded over time and which already introduces increased tests and requirements which will result in many existing claimants being barred – this latest set of proposals will produce still further poverty and disadvantage for disabled people.

Of course TUDA agrees with the principle that “Nobody should be written off”. However, compulsion is not the right way to help people either back into or keep people in work.

We also disagree with the simplistic slogan that work is good for you. TUDA knows only too well how many disabled people are blocked from entering employment, and the devastating impact that this has. Nevertheless our members also know that not all work is good for you - badly-paid, insecure work, with poor terms and conditions is not. Above all, the experience of repeatedly applying for jobs which one fails to get is very destructive. The research regarding the discrimination faced by disabled people is overwhelming. To pick but one example in 2005 the Chartered Institute for Personnel and Development found that

33.1% of its members excluded people with a history of long-term sickness or incapacity, even though such a policy would almost certainly be contrary to the Disability Discrimination Act.

More needs to be done to keep people who become disabled or whose impairment changes in employment. The Green Paper merely offers a modest commitment to "...explore, with stakeholders, the effectiveness of Employment Retention Assessments in helping disabled people stay in work." We call on the government to meet the commitment made in the Independent Living Strategy to establish a "cross governmental national strategy on employment retention", on which little activity seems to be taking place.

TUDA opposes the Government's proposals to toughen the Jobseeker's Allowance (JSA) sanctions regime, by introducing automatic benefit sanctions for people failing to attend a mandatory interview without good cause and new rules that would tackle violent behavior as it undermines everyone's efforts to seek and sustain employment. taking and testing powers to require long-term unemployed people and those not participating in back-to-work support to engage in a program of full-time, community-based work experience in order to improve their employability skills and build up their work habits;

- expecting problem drug users on benefits to take appropriate steps – such as drug treatment or employment provision – that support a return to work;

They propose that doctors tell us what work to do. We know from bitter experience how wrong and damaging such advice can be. We are the experts – we must not be dictated to about what jobs we need to look for.

Britain already has one of the world's toughest qualifying medical tests to receive disability-related benefits.

Instead of making it even tougher it needs a radical overhaul to reflect disabled peoples disadvantage in the Labour market rather than solely focusing on whether a person is able to undertake a range of physical and mental tasks.

Assessments should not be restricted to individual capacity to perform tasks. An assessment process must be holistic examining the environment, which the disabled person must interact with when taking on paid work. Such factors would include accessible transport, the routes to work are free from abuse and intimidation from example local

school kids, social care support is flexible to enable the disabled person to go to work especially if this involves varying shift patterns like in retail or service outlets and alike.

The Government has said that the funding for Access to Work will be doubled from £69 million to £138 million – but only by 2013, so much of this increase will therefore be eaten up by inflation. We need a bigger budget to expand to job seekers as well as volunteers and to restore to Government Departments.

A major barrier to disabled workers moving off benefit into work is the lack of Access to Work provision for job-seekers

Restoring Disability Rights

A recent House of Lords decision (Malcolm v L.B Lewisham) greatly restricted disabled people's rights.

Mr Malcolm, a man with schizophrenia (and thus covered by the DDA) sub-let his flat in breach of his tenancy agreement. Lewisham council brought eviction proceedings against him.

Mr Malcolm challenged this on grounds that, under the Disability Discrimination Act, managers of premises must not discriminate against a disabled occupier by evicting him or subjecting him to another detriment. This includes not treating a disabled person less favourably for a reason related to their disability, unless that can be justified.

Mr Malcolm argued that the court could not grant a possession order against him, as this would be disability-related discrimination. Because of the effect of his impairment, he argued that he did understand that he could not sublet his flat nor did he understand the potential consequences of doing so.

Until this case the approach would have been that the comparator was someone who did not have a disability and did not sublet (this test was established by the Court of Appeal in a case called *Clark v Novacold* in 1999)). In the Malcolm case, however, the House of Lords ruled that the comparator should be someone who had sublet their flat but who did not have a disability. Since Lewisham Council would have sought possession against anyone who had sublet his or her flat, the Law Lords found that Lewisham Council had not treated Mr Malcolm less favourably for a disability-related reason.

TUDA calls on the Government to introduce a revised version of disability related discrimination in order to correct the gap in protection left by the Malcolm judgement.

At the end of November the Government issued a Consultation Paper called Improving Disabled People's Rights. It needed to be responded to by 6th January! (Hardly good practice)

On the face of it this looked great – at last they were suggesting extending the prohibition against indirect discrimination to disabled people. But this was instead of, not in addition to, taking steps to remedy the Malcolm judgement. They propose just abolishing the concept of 'disability related discrimination'.

We said that this was not good enough. Whilst we would like in addition to see indirect discrimination introduced it is imperative that the Malcolm decision is reversed as soon as possible – and as effectively as possible. This decision overturned a long-standing understanding of disabled rights, well accepted by employers and service providers.

The decision removes a useful tool from the armoury of workplace representatives – prior to Malcolm, they could argue that if an employer was going to subject a disabled person to particular treatment, such as dismissal, and this was related to their disability, the onus would be on them to show that it was justified. Now, it is for the disabled person to say that they need adjustments – meaning a completely different emphasis.

The case for reversing this impact is also clear: the concept of disability related discrimination was well established and accepted by employers, service providers etc; with the sole exception of the housing arena, the flexibility of the justification provisions provided a satisfactory tool for bearing the weight of establishing whether treatment had been fair.

What the lawyers say!

Legal commentators across the spectrum agree that this decision severely restricts legal protection to disabled people.

Personnel Today's comment on the Malcolm case was headed 'Disability claims will now be harder to make'. They state: "employers will now have more freedom to dismiss absent disabled employees", although caution that reasonable adjustment considerations will still need to be considered.

IDS Diversity at Work commented "While the Novacold test was flawed as a comparative exercise, it could at least be said to encourage a climate where employers, landlords, retailers, etc needed to think about how their rules, actions and practices affect people with disabilities. The approach enshrined in Malcolm does exactly the opposite, requiring simply that disabled people are not the only one subject to such rules.

Solicitor's Journal stated that: "Parliament must now be urged to enact legislation to make clear their intentions and bring cases of indirect discrimination back within the scope of the DDA. "

Employment Lawyers Association Briefing

"The scope of the DDA has been significantly narrowed and much of the burden on employers has been lifted...The decision may come as a blow to disabled employees and, as was acknowledged by the Lords, they may find they now have fewer rights."

Parliamentary inquiry into disabled people's equality

The Work and Pensions Committee announced an inquiry "The Equality Bill: What steps should DWP take to achieve greater equality?" The inquiry is to evaluate the effectiveness of current equality legislation and proposals in the Equality Bill. How can the Equality Bill open up opportunities in employment, particularly for disabled people, carers and pensioners? How could the duties in Goods, Facilities and Services of the DDA be built on to deliver systemic change? How can the Access to Work scheme better enable people to obtain, stay and progress in work?

TUDA Responded

- We welcome the proposal for an EC Equality Directive which would help address non-employment areas across Europe. The Government needs to anticipate the new obligations in the Equality Bill.
- The Government needs to ratify the UN Disability Convention as soon as possible and without reservations or interpretative declarations.
- Our priorities for the Equality Act are:
 - A comprehensive definition of discrimination that effectively addresses inequality and structural disadvantage of disabled people.
 - Extending protection to those associated with disabled people
 - Preserve existing rights of disabled children in education.

- Retain the key principles of both the general and specific disability equality duties.
 - Extend the Public Sector duty to the private and voluntary sector.
 - Strengthen the enforcement of the legislation.
 - Maintain and extend the Access to Work Programme
 - Monitor the implementation of the Equality Act.
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Disability Committee Meeting held on Wednesday 15 October 2008 in Congress House, Great Russell Street, London WC1B 3LS Written by Richard Cook

Election of Chair; I proposed Mark Fysh who was elected
TUC Disability Conference 2008 report

The most significant important single item on our agenda. The first is our motions, monitoring report, guest speakers, comments from delegates, and next year's conference. We looked at each motion individually and any letters sent or consultations by the TUC: Monitoring: Peter said thank you and with help from the disability committee a good 70% return was achieved. I said this was good but we must still try to improve. I found the monitoring compelling reading with some good & bad points. It was felt the delegations sent from some unions were not always a reflection of the people they represent such as women and ethnic minorities. The TUC said we must encourage all unions to send a more representative mix of delegates in future. All elected members of this committee must try to do this?

TUC Disability Conference

Guest speakers for 2009. Suggestions of new subjects were made. Chairing the same as 2008 as this worked well. Informal topics were suggested would raise this more at next meeting in January. Some speakers were suggested such as the general secretary and president.

Report of meeting with EHRC

Peter reported he had an extremely friendly positive meeting with EHRC. It was upsetting the reaction the disability press had given the EHRC recently? The committee decided we must invite Niel Crowther as had been suggested. Peter said training to be provided by EHRC is good news and we should be pleased with this.

Access to Work campaign update

I said; is the statement to restore ATW still a fact? Have we had any formal response yet? Peter said the paper presents me with conflicting information that

are provided by letters and on the other hand by verbal promises, so the long and short of it is, we seem to have won a resounding victory, alternatively it could be wrong so who knows. My recommendation is that we assume that we have won this case but until we have had full confirmation I am really unsure.

Social Care consultation

Richard Exell, Senior Policy Officer, Economic & Social Affairs Department
Richard said he was putting together the TUC response. Some of the points raised were that the ideal one place for social care was the NHS. We had quite an interesting discussion about what our attitude should be on what is probably the most important report on social care. We decided we should oppose privatisation, where possible supporting the personalisation agenda, not to be opposing direct payments. We were concerned that the quality of assessments varies so widely and we must insist that individual budgets are a free and voluntary choice. Richard did not want people forced into an individualised system.

TUC equality audit

Sally Brett, TUC Equality Policy Officer, Equality & Employment Rights Department
The theme this time is promoting equality through collective bargaining. The TUC does have a good response rate from unions and we have made some changes especially on collective bargaining. The forms are going out now. Many good suggestions were made to improve the audit and this was taken on board by the TUC.

Speakers at Committee meetings

The committee agreed to have one speaker at each meeting POA was invited today. Prison Officers Association (POA) gave us a comprehensive report. The prison service do not recognise their own disabilities network and are aggressively convinced it is not required, But it is for the trade union to show that it must be put in place. Lots of information was given, this was a sharp learning curve for the disability committee. Sara Veal suggested they come to our equality briefing meetings.

Joint work with the TUC Women's Committee*

Narmadha Thiranagama, TUC Women's Policy Officer introduced this item
The Women's committee proposes that they work with the disability committee where we have common ground and a joint interest. The disability committee was keen to do this but said we must always be consulted on everything. Narmadha said that she was about to write a report on women and transport and this is an area where we

could work together such as violence against women, access issues and mental health.

Report of Committee Chairs meeting

Richard Cook went to the last meeting, as Mark was unavailable.

Congress 2008

Peter said this is a short report; We had a problem with equality fringe events clashing and we must ensure this does not happen again and we were asked to take this back to our unions?

Malcolm and Coleman

The committee had a very good report on good and bad legal decisions that had been made.

Date of next meeting: 22 January 2009

Just a thought from the TUDA newsletter editor. Please let Richard Cook know! findcook@hotmail.com
Richard's post address is 141 Vale Road Northfleet, Kent DA11 8BX. **In an attempt to try to save TUDA money** and speed up the provision of information, if you have e-mail (and we understand not everyone does), would any TUDA members like to have all future newsletters via e-mail? Thanks to those who signed up after reading recent newsletters. NB: Views expressed in this Newsletter are not necessarily those of all the trade unions represented on our

Executive but reflect the opinion and policies of most of them. **Our website** www.tuda.org.uk also has lots of news and information. Please tell us of any issues you feel we should cover. We encourage people to submit both information and articles for inclusion so get writing if you can. **TUDA Secretary Alan Martin, Membership Secretary Sherrell Martin. Co-Chairs Ju Gosling & Caroline Gooding can be contacted via our box number, BM TUDA, London WC1N 3XX. Email: mail@tuda.org.uk**

TUDA Merchandise 'From the Membership Secretary'

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The address is just before the end of this article.

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How to join TUDA

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{National Unions with 100,000 members or less	£100.00 ----
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NB: We recently raised our subscription rates for national unions in recognition of continued mergers. However, we have held our rates down for smaller unions.

Please make cheques payable to Trade Union Disability Alliance