

Equal opportunity and disability

An assessment of the MPO revised code of practice for the employment of people with disabilities

1. Introduction

The proposed code of practice on the employment of staff with disabilities has been drawn up by MPO, in consultation with disablement liaison officers and Trade union representatives, to replace a code which has been current since 1977. The decision to revise the code stemmed from a review, undertaken by the manpower services commission of the disabled persons (employment) act 1944, with specific reference to the 'quota' system which had been in operation since the inception of the act. The review generally concluded that the quota system was ineffective and needed replacing. In parallel to this, in 1983 a select committee was set up under the chairmanship of Peter Large to look more generally into the restrictions faced by people with disabilities. The CORAD committee (Committee on Restrictions Against Disabled People) concluded that there was a need for a new primary legislation to combat discrimination. Following this, a private member's Bill was introduced and debated which proposed anti-discriminatory legislation closely following the format of the sex discrimination act. The Bill was debated at length but was voted out because of opposition from the cabinet. The government line was that discrimination against people with disabilities would be best combated by voluntary measures. The code of practice in question is, therefore, a manifestation of this policy.

2. As I hope will become clear from the arguments contained in this paper, it perhaps is a valid view that this code and the approach to the question of the employment of people with disabilities which is inherent in it, is unlikely to contribute to the furtherance of the employment of people with disabilities on equal terms with their 'able-bodied' counterparts. It would appear that the detail of the code has been drawn together without consultation with employees with disabilities themselves. It therefore contains assumptions which are themselves discriminatory. To provide comment on the specific detail of the code could be likened to a black South African providing comment on the detail of a code promoting the fair operation of apartheid. Before any effective policy on the employment of people with disabilities can be drawn up, the issues involved in the question have to be understood. This paper is an attempt to promote this understanding.

What is disability? What does it mean?

3. As a basic starting point for any discussion on the subject of disability, it is imperative that "disability" be defined. All conclusions stem from this definition. The definition contained in the code, and in fact the essence of the definition used in the disabled persons (employment) act 1944, is as follows;

"This Code deals with people with a disability which substantially handicaps them in obtaining and keeping employment which, apart from that disability, would normally be suited to their age, experience and qualifications."

This definition is fundamentally flawed. Disability can be more accurately defined as follows;

"The inability to perform a certain physical or mental function which the human body is designed to perform, due to a congenital condition, accident, illness, or the process of ageing."

Some people cannot naturally walk, see, hear, reason etc etc. It is accepted that in some cases this disability is severe and prevents some people from taking part in the normal process of life. An extreme example of this would be someone in a permanent coma. However, in the context of this discussion we are considering people from whom this is not the case. People who have a disability, but who are living a normal life.¹ Let us use the term inconsequential disability to define this position.

4. The fact of disability and the consequences of that disability are distinct and separate issues. The code's definition blurs the two and makes a fundamental judgment. This is that disability per se 'substantially handicaps (people from) obtaining and keeping employment'. In the case of the person in the coma, let us use the term inactivating disability to describe this condition, this is certainly true. Generally, however, this is not the case. I cannot walk. I use a wheelchair to circumvent the consequences of this fact. The consequence is overcome and I can function normally, albeit differently. I cannot hear. I use sign language and lip reading to overcome the consequence of this fact. I can function normally.

5. Perhaps the best example of an inconsequential disability is short-sightedness. I have a congenital flaw in my eye lens. I cannot see things which are close to me. This is a serious problem and limits me from reading, driving etc. I use glasses which circumvent the consequence of this disability. I can function normally. Why is it that the inconsequential disability of short-sightedness does not limit employment opportunities and that of not being able to walk does? It should be clear that this paradox illustrates the fact that it is not the consequence of disability which is the limiting factor, but the attitude of society to that disability. People who are short-sighted are accepted as 'normal' because many people have this disability. If only one in two hundred needed glasses the situation would be different.

6. In conclusion, the 'problem' which should be addressed by the MPO Code is the question of prejudice and discrimination; the denial of equality for people with disabilities because of a general unfounded belief about disability. As will be argued, the process of prejudice and the consequence of discrimination on the grounds of disability are parallel with racial and sexual discrimination. The code is flawed from the start because it does not accept this. In its very first paragraph a discriminatory assumption is made and this permeates the code.

The context

7. The question of the furtherance of true equal opportunity for people with disabilities in the area of employment, is parallel to those raised by the more concrete programme of equal opportunities for women and ethnic minorities. The 'problem' which the equal opportunities programme attempts to confront can be expressed as follows. How can existing engrained prejudice leading to discrimination be recognised and eradicated so that all employees have equal opportunity with regard to recruitment, training, job quality and promotion without being discriminated against inequitably because of their sex, race, religion, age, class, sexuality or disability. It is gradually becoming accepted that all

¹ The use of the word 'normal' presents particular problems in this debate. In this context I am using it purely to describe the process of the usual economic and social interaction of individuals in the community.

employees should be judged on their proven abilities and given work in line with those abilities, so that the work is done effectively. The debate concerning the furtherance of equal opportunities does not concern merely moral questions. Continuance of discrimination leads to an ineffective use of available work resources.

8. The fact that the position of people with disabilities can be categorized along with those of women and ethnic minorities is an important question. It is for example accepted that the special needs of the disabled and of women may well differ in certain respects (although many solutions to specific problems may well be the same). However, the reasons why both groups face a lack of opportunity in the field of employment are fundamentally the same. It is a sad fact that this is rarely recognised. Disabled people have until recently been placed in a category apart from the main stream of the equal opportunities movement. This has led to a stagnation in efforts to further true equal opportunity and has led to the continuation of the provision of concessionary measures. It is not that there is any lack of willingness to make things easier and to help people with disabilities. It is that this willingness stems from a paternalism which leads to discriminatory attitudes. Generally we feel that we want to help the person with the disability because that person is, as we perceive it, disadvantaged. We want to give that person a job because we feel that it is the right thing to do. The provision is on our terms though and goes as far as we want it to. This attitude is very much akin to the situation where the traditional husband figure encourages the traditional wife figure to open up a market stall because "it would give her something to do".

Disability and discrimination

9. Prejudice and discrimination on the grounds of disability is common, widespread, but in most cases unrecognised. As has been discussed above, the most disabling factor of an inconsequential disability is the attitude which self-appointed 'normal' society takes towards that disability. Basic assumptions are made and accepted without question. These assumptions are often prejudicial, but are accepted as reasonable. To illustrate this let us use the hypothetical example of a newly married woman and a person in a wheelchair applying for a responsible job. It is accepted that both candidates have the abilities and qualifications to undertake the work effectively. Twenty years ago the failure to promote the woman, even though she was the best candidate, may be generally accepted as right because of the practical consideration that, because she was married she would want children become pregnant and leave the job after a short time. It is now generally accepted that the attitude inherent in this sentiment is discriminatory. It is also illegal. The failure to promote the person in the wheelchair would still be accepted as reasonable if dressed up in the same way with the excuses maybe relating to fire regulations, mobility or access.

10. It is, of course, accepted that there are many jobs which certain people with certain disabilities could not do because of the limitations of that disability. It would not be discriminatory, for example, not to employ somebody in a wheelchair as a fire officer because of their disability. It would not be wrong not to give a bus driver's job to a blind person. This is an obvious fact but it is worth stating merely to emphasize that disability is a factor in considering people for employment. It is, however, only a factor. Every job requires certain qualities. Someone who has a pathological fear of fire would not apply to become a fireman. Someone who cannot drive would not apply to become a bus driver. In the same way it is unlikely that a person with a disability will apply for a job which could not effectively be done because of that disability. As will be argued below, this is an important factor when considering a person with a disability for a specific post. Assumptions about a person's disability, made without consultation with that person, is often a major reason for

lack of opportunity.

11. To illustrate this point let me use a recent personal example of what the consequence of lack of consultation can be. During the summer I applied to take an MA at a local polytechnic. On the basis of my academic qualifications and references I was accepted onto the course. When I turned up to enroll I saw that, in certain respects, the access to the site was not perfect. Two of the lecture rooms were up steps. It was clear, however, that in the short term, this could be overcome by lifting my wheelchair and, in the long term, that ramps could cheaply be provided. I had not mentioned my disability in the application form. If I had it would have been a certainty that my application would have been rejected. It is the policy of the polytechnic for applications from students with disabilities to be vetted by an 'expert'. Further to this it is policy that the facilities are inadequate and that, therefore, students with certain disabilities are not accepted.

The so called 'expert' is the student welfare officer whose knowledge and experience of disability is limited. Assumptions about access are made without consultation and people are rejected on the basis on those assumptions. In my case the assumption would have been false and discrimination would have occurred.

12. The code of practice categorizes staff with disabilities into three distinct groups:

- i. Those who have overcome their disability so that it no longer has any significant limiting effect to the type of job they can do.
- ii. Those who need practical help in overcoming their handicap which, once overcome, will not limit the type of employment they can undertake.
- iii.

those whose employment range may be restricted by their handicap but, who, given the right job, are as effective as anyone else.

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This is a main, area of the code where undue emphasis is placed on disability. Throughout the document, line managers are extensively told that they should look to abilities and not disabilities. However, this categorisation immediately focuses on the disability as opposed to the ability. A line manager will be dealing with a number of staff, most of whom will have limitations. Because somebody walks it does not mean that there is a universal range of jobs which she or he can do. This range is restricted by a number of factors among which can be counted qualifications, abilities, strengths, weaknesses, family responsibilities, whether or not they hold a driving licence etc etc. as an example, a single parent may be restricted from doing a particular job because of the need to look after a child. This restriction may well be able to be overcome by the provision of crèche facilities or the introduction of flexible working hours. Emphasis is not drawn to the fact that a woman employee has a child and that women with children should be given different consideration.

The reaction from employees and trade unionists would be quite interesting to see if a guide was issued on the employment of women with children which categorised women as:

- i. Those women who are married and whose children were over 21 and therefore do not limit the work they can do.
- ii. Those who are married but have young children and who may need some practical help in overcoming the restrictions placed by those children.
- iii.

single parents with young children who may be restricted to the type of job they can do

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by their domestic responsibilities but who, given the right job, are as effective as anyone else.

13. In conclusion to this section, the points made can be summarised as follows:

- i. Disability is factor in considering employment, but is not an overriding factor.
- ii. Lack of opportunity generally derives from attitude and not the fact of disability.
- iii. he limitations of disability have to be placed in the context of the diverse range of limitations contained in any workforce.

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In relation to these points, the code does not:

- a) State that discrimination on the grounds of disability will not be tolerated.
- b) Categorically state that people with disabilities have a right to equal treatment.
- c) Give sufficient emphasis to consultation with the employee her or himself regarding abilities and needs and,
- d) In its tone draws attention to disability in a way which could well lead to the continued disadvantage of employees with disabilities.

The fundamental limitations of the code:

14. It can be said that lack of opportunity for employees with disabilities arises because of three main factors:

- i. The attitude of management, colleagues and trade unionists based on false discriminatory assumptions about disability.
- ii. Limited access to the work place.
- iii. Lack of facilities.

The most important of these factors is the former. The code does in fact confront the latter two factors. It does little, however, to confront the basic problem. In fact it is arguable that the code militates against any progress in this area.

15. Although the code stresses that line managers should not have preconceptions and should not make assumptions about disability, there is no indication as to how such assumptions should be recognised and dealt with. The tenor of the code puts emphasis on disability, without placing it in any context. It is arguable, therefore, that assumptions and preconceptions will be in fact reinforced and that the benign discrimination endemic within society will be promoted.

16. The other fundamental limitation of the code is its lack of any 'teeth'. It does not even seem to acknowledge that an employee with a disability may well have cause for complaint about discriminatory treatment. Generally discrimination will still occur, but will now be backed by a code of practice. "I haven't discriminated against you. I have followed all the guidance in this code."

17. What is to be done

1. Legislation

The prerequisite for the progression of equal opportunities and the recision of discriminatory behaviour ultimately is legislation. There is a strong case for saying that without the race relations act and the sex discrimination act the position of women and ethnic minorities would to a large extent have remained the same as they were. It must be an offence under civil law to discriminate against a person inequitably on the pure grounds of disability. Such legislation would be backed by an Equal Opportunities Board and follow along the lines of the Sex Discrimination Act. Voluntary measures, including codes of practice, can only be cosmetic and a policy which advocates them is one which merely pays lip service to the problem. There is little difficulty in assessing discrimination. The following examples serve to prove this point:

"I cannot employ you because my clients would not do business with somebody in a wheelchair."

"I will not take you to a meeting because I am embarrassed by your steel leg."

"I will not promote you because I believe a sighted person would do the job better."

"You cannot do this job because your staff could not cope if you had an epileptic fit."

"If I promoted you I would have to restructure the office and I am not doing that for one person."

The outmoded and ineffective quota system would be replaced by a policy of positive recruitment aiming at increasing the number of disabled people working at all levels, backed by a monitoring system making sure that policy was effectively implemented.

2. Awareness training

As a part of general management training, a course on discrimination awareness should be constructed which relates to all types of discrimination and includes the specific aspects of disability. This would serve the purpose of raising general awareness that discrimination does exist, show how it manifests itself and discuss methods of its eradication.

3. A programme to improve facilities.

A study of access and facilities for people with disabilities should be undertaken and a programme outlining areas for the improvement of existing accommodation drawn up. This should be done in direct consultation with people with disabilities.

Any improvements which are made will obviously be restrained by the availability of resources, but it is surprising how small and uncostly changes can make a radical difference. Any general improvements made should take into account employees with disabilities, whether or not any such people are in employment at a given time.

Structural improvements also should not be over-ridingly geared towards individuals. It is often the case, particularly with small departments, that the number of employees working in an office at any one time is likely to be small. This can lead to a feeling of isolation and, if it is possible for an individual to cope, albeit by her or him being dependant on colleagues to open fire doors or press lift buttons, then s/he may well feel that improvements which appear to be made to accommodate only one person may well not be justified. A clear policy should be instigated that, within the reasonable bounds of available resources, improvements

will be made as a right, not only to render the individual more effective, but to generally make an office more 'user friendly' for staff with disabilities. It is worth noting, for example, that an environment where a wheelchair can move around with ease, is also one where trolleys, equipment etc can move around with ease.

4. The provision of equipment.

Staff with disabilities should, as a matter of policy, be encouraged to think constructively about whether there exists a specific piece of equipment which would improve their effectiveness in their work. Examples of the range of equipment available should be given. It may be, for example, that an employee might find that the use of a word-processor would improve her or his effectiveness. They might, however, never have seen such a piece of equipment or realize that it might be available.