



GLADNET

**International Research Project on Job
Retention and Return to Work
Strategies for Disabled Workers**

**Study Report
United Kingdom**



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PREFACE

The *International Research Project on Job Retention and Return to Work Strategies for Disabled Workers* is an initiative of the International Labour Organisation (ILO) and the Global Applied Research and Information Network on Employment and Training (GLADNET). It reflects ILO and GLADNET joint aims of establishing a base for cross-national research and strengthening links between research analysis and policy reform in the field of employment of disabled people.

The Project is a response to a combination of developments which highlight the need for more effective policies and practices in support of workers whose prospects of remaining in employment are jeopardised by work injury, illness or disability. Persons with disabilities are increasingly claiming rights to stay in work as well as to access employment. Pressures on state budgets, the rising costs of compensation claims and disability benefits, and changes in the structure of the labour market are strengthening policies in favour of job retention and return to work. Enterprises are developing their own strategies to minimise the costs of disability and to retain valued employees. Overall, the balance of responsibility is shifting from the state to the enterprise.

Policies and practices to prevent disabled workers from leaving work unnecessarily, and to facilitate rapid return to employment if job loss cannot be prevented, are recent developments in many countries. The cross-national exchange of information on initiatives and their effects is limited. The first aim of this Project has been to gather information about what has been attempted, by whom, for what purposes, in which contexts and to what effects. The second, more ambitious, aim, is to examine the interaction between the various policies and practices, identify dysfunctions, and work towards more coherent and cost-effective strategies for job retention and return to work which might be applied in different national systems. The ultimate objective is to identify strategies which can be put into effect in the workplace.

The Project was constructed in two phases. In Phase One, eight exploratory desk-based studies were commissioned from researchers in Canada, France, Germany, the Netherlands, New Zealand, Sweden, the United Kingdom and the USA. The eight countries invited to participate represent a spectrum of policy approaches and enterprise practices which affect the retention and return to work of workers with disabilities. Australia joined the project at a later stage.

The studies formed the basis for a *Key Issues* Paper, published simultaneously with the eight country reports. This Paper aims to inform, stimulate debate and pave the way for constructive discussion of questions for further exploration through cross-national collaboration in Phase Two.

National government departments, agencies, a private sector organisation, and the ILO co-sponsored Phase One of the Project. Overall responsibility for the Project rests with the ILO (Vocational Rehabilitation Branch, Employment and Training Department). The design, implementation and analysis of the research in Phase One were the responsibility of the Research Co-ordination Unit established at the Social Policy Research Unit, University of York (UK) in April 1997. Research specialists in the main areas of enquiry, based in study countries, contributed at all stages of the research process and, with ILO representatives, met with the research co-ordinators as a Research Advisory Group.

The country studies

The Project recruited and supported national informants from research institutes in all eight countries. During the second half of 1997 they completed a Schedule of Questions developed by the Research Co-ordination Unit to describe policies and practices, document evidence of their effects and provide grounded commentary on how policies and practices interact. The principal sources were policy documents, survey data, research evaluations and critical reviews. Informants were encouraged to contact sources in government departments and agencies, disabled people's organisations, labour unions and employers' groups. Where documented information was lacking, informants interviewed experts in the field.

The eight country reports are important resources for the development of job retention policy and practice both within and across countries. Each report brings together within a single volume: descriptions of policies, practices and programmes which impact on job retention and return to work; evaluative material; and informed commentary. They cover five themes: employment and labour market policies; benefit and compensation programmes; employment support and rehabilitation services; adaptation of work and workplace; and measures developed and implemented by the enterprise. In line with the research aim of identifying coherent and co-ordinated strategies, the informants both comment on dysfunctions in national systems which obstruct job retention efforts and identify links between themes.

It should be noted that the situation described in the reports may have changed. This is especially true of the Netherlands where further reforms were expected in the first half of 1998 and the United Kingdom where the government changed in May 1997. Important developments in the USA were announced in March 1998.

The reports produced by the eight teams of national informants conformed to the format laid down by the Schedule of Questions. The original reports have been edited for publication by the Research Co-ordination Unit in co-operation with their authors. However, they remain essentially the 'raw data' for analysis and should be read in that light. Each report follows the same sequence of headings which reflect the original open-ended questions. As the questionnaire prompted informants to respond flexibly to suggestions about possible areas to address under each question, the content varies from report to report. The reader should note that, at the end of a thematic section, commentary may be included on the links between that theme and those which precede it.

Terms used in the study

The study concerns paid competitive employment in the open labour market.

The term 'disabled workers' is broadly defined. It covers individuals who become disabled, injured or ill whose prospects of continuing or advancing in employment are jeopardised when an acquired impairment, illness or deteriorating condition - physical or mental - presents difficulties in fulfilling the requirements of the job, reduces earning capacity or affects other rewards of working. They may or may not qualify under legal definitions of disabled persons. The term also covers workers with disabilities whose working capacity is not diminishing but whose continued employment is nevertheless threatened by prejudice or discrimination, or by the loss of supports which have maintained them in the job.

'Job retention' means staying with the same employer, with the same or different duties or conditions of employment, and includes return after a period of paid or unpaid absence. 'Return to work' refers to the resumption of employment by a worker who has crossed the threshold from a continued employment

relationship into non-employed status; the main interest of the study is in policies and practices which return the disabled individual to work at an early stage.

Acknowledgements

The publication of eight country reports of a very high quality in a short space of time would not have been possible without the expert attention of Andrew Nocon of the Social Policy Research Unit who edited the reports with remarkable care and efficiency. His task was made easier by the eight teams of informants who most willingly answered queries and approved the edited versions to tight deadlines.

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Copies of the 'Methodology Paper' and the 'Informant Briefing and Schedule of Questions' may be obtained from the Research Co-ordination Unit, Social Policy Research Unit, University of York, YO1 5DD, UK.

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I. EMPLOYMENT POLICIES

The purpose of this Part of the report is to describe policies which maintain those workers in employment whose continued employment is at risk because of disability. It provides evidence of the effects of those policies and identifies factors which influence their effectiveness. The emphasis in this part is on national (or state/provincial) policies formulated by government, and by bi-partite or tri-partite policy-making and advisory bodies.

Sections 1 to 5 are concerned with legislation, incentives and other 'persuasion' policies which oblige and encourage enterprises to retain disabled employees. A distinction is made between employees who become disabled and those who are already disabled. Information is provided about employment policies which encourage disabled employees to retain or return to their jobs. Sections 6 to 8 focus on the factors which affects the success of policies. They also examine the labour market factors which contribute to the retention or loss of jobs among disabled people.

I.1 POLICIES WHICH AIM SPECIFICALLY TO INFLUENCE ENTERPRISES TO RETAIN NEWLY DISABLED EMPLOYEES

I.1.1 Legal obligations and binding agreements intended to prevent and restrict the dismissal of employees who become disabled

Disability Discrimination Act 1995

The only current legal obligations on employers which are specifically intended to prevent or restrict dismissal of employees who become disabled are contained within the Disability Discrimination Act 1995 (DDA). The employment provisions of the DDA (which came into effect in December 1996) make it unlawful to discriminate against disabled people or people who have had a disability, unless that discrimination can be legally justified. The Act states that an employer will have discriminated against a disabled person if, for a reason which relates to a person's disability, they treat the disabled person less favourably than they treat, or would treat, others who do not have a disability. Less favourable treatment will only be justified if the disabled person becomes unsuitable for employment and the nature of the disabled person's disability significantly impedes, or would significantly impede, the performance of any of their duties.

It is unlawful to discriminate:

- in arrangements for the selection and recruitment of staff
- in the terms on which employment is offered
- by refusing to offer, or deliberately not offering, employment
- in opportunities (or lack of opportunities) for promotion, transfer, training or any other benefit
- by *dismissal*, or by subjection to any other detrimental treatment.

The Act defines disability as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry our normal day-to-day activities'. Because of the definition of long-term

effects (which must have lasted at least 12 months, or be likely to last at least 12 months, or for the rest of the life of the person affected, and include effects which are likely to recur) coverage in relation to dismissal is limited. However, also covered by the Act are progressive conditions (such as cancer, HIV infection, multiple sclerosis or muscular dystrophy) where effects are likely to become substantial; the Act covers people with these conditions from the moment when there is a noticeable effect on normal day-to-day activity, however slight.

The Act thus extends coverage to certain individuals who become disabled, in comparison with the Disabled Persons (Employment) Act 1944, which protected only already registered disabled people against dismissal.

Situation before the DDA

Under the Disabled Persons (Employment) Act 1944, it was a criminal offence for employers to dismiss a registered disabled employee without reasonable cause, if this would result in the number of registered disabled workers falling below the quota (see I.2.1), unless the dismissal brought the size of the workforce below 20. However, disabled workers were unable to establish rights to employment protection through the courts under the terms of that Act.

In 1992, judicial review proceedings were brought by a disabled individual against the Department of Employment, challenging the Government's apparent policy of not enforcing the 1944 legislation. The plaintiff, a registered disabled person with multiple sclerosis, was concerned that the Department had failed to prosecute her former employer following her dismissal as a secretary 'without reasonable cause', contrary to section 9 of the Act. The Department's defence was that it had no such policy of non-enforcement, but it attempted to resolve cases of statutory breach by negotiation and advice before consideration would be given to prosecution. ... The case was withdrawn before the matter came to a hearing.¹

It would have been consistent for employers who took steps to adhere to the 1944 Act to operate policies designed to avoid the dismissal of registered disabled workers. A Cabinet Office document contained the statement:

In view of the Government's commitment to comply with the Disabled Persons (Employment) Act 1944, make every effort to avoid making disabled people compulsory redundant: particularly when this would mean that the proportion of registered disabled people employed would fall below three per cent.²

However, policies that promoted adherence to the quota system could not prevent disabled workers leaving employment on a voluntary basis:

Currently the Company employs 1,101 registered people with disabilities or 0.6 per cent of the total workforce. The number has been declining disproportionately as various voluntary redundancy schemes are advertised. In 1989/90, one per cent of the workforce were registered disabled. There is little doubt that people with disabilities have on occasion been pressurised into taking medical retirement, or have felt the company offered them no viable future.³

Other than in respect of the provisions described above, before the DDA disabled workers had the same employment rights as non-disabled workers: entitlement to a claim for unfair dismissal applied only after two years' continuous service with the same employer.

DDA enforcement procedures and remedies

A complaint of unlawful discrimination under the employment provisions of the Act may be presented to an industrial tribunal within three months of the action about which a complaint has been made. When a complaint is made to a tribunal, the conciliation service of the Advisory Conciliation and Arbitration Service (ACAS), or in Northern Ireland the Labour Relations Agency (LA), will attempt a settlement in the first instance. ACAS and LA can act to attempt a settlement without a formal application being made to a tribunal. No other civil or criminal proceedings (except judicial review) may be brought. The usual remedy in a successful complaint will be compensation, including damages for injury to feelings. There is no power to make binding orders or injunctions to provide positive remedies for the disabled applicant or to require employers to adopt non-discriminatory policies or practices.

The Act was heavily criticised on two counts relating to its effectiveness in preventing dismissal:
it does not provide for an independent Commission to enforce the DDA and provide guidance and education to employers, trade unions and disabled people; and the State does not currently provide any financial support (Legal Aid) for people wishing to take their case to an industrial tribunal.

The Act is to be strengthened by the new Labour administration which was elected in May 1997. The Labour Party made an election manifesto commitment to create a Disability Rights Commission in place of the National Disability Council set up under the Disability Discrimination Act; the Government has now confirmed its intention. If this Commission were to be modelled on the Commission for Racial Equality or the Equal Opportunities Commission, it would have the power of independent investigation into cases of alleged disability discrimination and be able to impose sanctions on organisations deemed to have unlawfully discriminated against disabled people. It would also have a broad educational role. A taskforce has been set up to review the DDA.

Effects of DDA on dismissal

It is too early to comment on the effectiveness of DDA procedures in preventing dismissal. However, the numbers of cases brought to industrial tribunals since the relevant sections of the Act were implemented in December 1996 show that most cases relate to dismissal. Of 756 applications brought (up to the end of August 1997), 456 came under the heading 'dismissal', 100 'any other detriment', 80 'recruitment' and 120 'adjustments'. (Figures total more than 756 because some applications were made under more than one heading).^{4 a}

^a Up to the end of February 1998, there had been 1,500 applications: 1,021 related to 'dismissal'; 238 'any other detriment'; 176 'recruitment'; and 346 'adjustments' (*RADAR Bulletin*, no 280, April 1998, p.12).

I.1.2 Legal obligations and binding agreements intended to promote the retention of employees who become disabled

The DDA introduces a duty on the employer to make reasonable adjustments in cases where working arrangements or the physical features of premises place a disabled employee (or prospective employee) at substantial disadvantage compared to someone who is not disabled. Where a disabled person is placed at such a disadvantage the employer must take such steps as are reasonable in the circumstances in order to prevent the arrangements or feature having that effect.

Factors that will be taken into account to determine how reasonable an adjustment is include: the cost of the adjustment; the effectiveness of the adjustment; the disruption the adjustment might cause to other employees; the size and resources of the employer.⁵

The following are examples of adjustments that may be required:

- adjusting premises
- allocating duties to another employee
- transferring the employee to fill an existing vacancy
- altering working hours
- assigning them to a different place of work
- allowing absence during working hours for rehabilitation, assessment or treatment
- giving additional training
- acquiring or modifying equipment
- modifying instructions or reference manuals
- modifying procedures for testing or assessment
- providing a reader or interpreter
- providing supervision.

The new duty requiring an employer to make reasonable adjustments will undoubtedly influence the job retention of newly disabled workers although, as the employment provisions of the DDA have only been in force since 2 December 1996, there is a lack of information on enterprises' policies and procedures at a practical level.

The possible costs to business were a major concern to the Conservative government which introduced the Act. There is some evidence that many large UK employers do not regard the DDA as intrusive or costly⁶ although, prior to the enactment of the legislation, the Confederation of British Industry (CBI) and the Institute of Directors were consistent in objecting to the introduction of anti-discrimination legislation in the area of disability and employment. The Employers' Forum on Disability (EFD) (see I.1.3) is supportive of the new legislation, believing it to 'represent new opportunities and challenges for British Employers'.⁷

I.1.3 Voluntary policies and programmes which encourage enterprises to retain newly disabled employees

Persuasion, rather than regulation, has underpinned government policy for the last 20 years. A number of voluntary initiatives have been developed to encourage enterprises to recruit and retain disabled employees, including newly disabled employees.

The Disability Symbol

The Disability Symbol was introduced by the Government in 1990. It is a logo and a statement 'positive about disabled people' which employers can use to encourage job applications from disabled people and to demonstrate an organisational commitment to good employment opportunities for disabled people. The employing organisations using the Symbol, now in excess of 2,500, have made a commitment to:

- interview all disabled applicants who meet the criteria for a vacancy and consider them on their abilities;
- ask disabled employees, at least once a year, how the organisation can enable them to develop and use their abilities at work;
- take action to ensure that key employees develop the awareness of disability needed to make commitments work;
- make every effort when employees become disabled to make sure that they stay in employment;
- each year review these commitments and what has been achieved, plan ways to improve them and inform all employees about progress and future plans.

Statistics are collated by region rather than by industry or sector. The actual job retention practices of enterprises which have endorsed this programme are unclear. It is a good public relations exercise for many enterprises to adopt this programme but the outcomes for employees are not evident. A government-commissioned survey⁸ found that Symbol users were more likely to have a written policy specifically addressing the employment of disabled people and more likely to actively try to attract applications from disabled people. However, Symbol users were no more likely to have disabled people working in their organisation. It is possible that registration as a Symbol user attracted those employers who already had good practices in place.

Programme for action to achieve equality of opportunity in the civil service for disabled people

The stated aim of this programme is to provide a framework to help government departments and agencies to recruit, retain and promote people on merit, regardless of whether they have a disability.⁹ The specific retention-related actions under this programme are to:

- try to retain staff who become affected by disability;
- consider offering rehabilitation leave;
- consult the individual to restructure the post, acquire appropriate equipment or adapt premises;
- restructure the job if difficulties cannot be resolved;
- consider the possibility of remote working, part-time working or other opportunities for flexible working;

- if no suitable post can be found within their own department, look at transfer to another department or agency;
- if medical retirement appears to be inevitable, consider the Supported Employment Programme (see I.2.3).

The EFD ten point agenda for action

The Employers' Forum on Disability (EFD) is a large voluntary membership organisation with 246 members in Autumn 1997. These are mainly large private and public sector employers, whose collective aim is to 'improve the job prospects of disabled people by making it easier for employers to recruit, retain and develop disabled employees'.¹⁰ Together with the Northern Ireland Employers' Forum on Disability and Local Employer Networks, the EFD is welcomed and encouraged by government but is not formally part of government policy. Many of the members are 'Disability Symbol' users.

The EFD's 'Ten Point Agenda for Action' on disability is designed to promote employment opportunities and improve customer service. Point 6 of this Agenda is concerned with Retention, Retraining and Redeployment, and those signing up to the Agenda make a commitment to support any employee who becomes disabled within the course of their employment. They will be given 'the fullest support' to maintain or return to a role appropriate to their experience and abilities within the organisation.¹¹

The Executive Director points to the role of EFD members in leading other employers by example. The EFD has a prohibitive membership fee structure for smaller employers and acknowledges this. It hopes, however, that the larger companies within the EFD can educate and persuade smaller contractors, suppliers and customers to adopt the philosophy of the Ten Point Agenda for Action. For example, British Telecom (BT) expects the Manpower recruitment agency to provide it with a percentage of recruits who are disabled.¹² However, it is less easy to influence retention policies in this way.

The adherence to the Ten Point Agenda for Action was researched in a postal survey in early 1995 of 130 EFD members' experiences in implementing the Agenda and their perceptions of disability.¹³ The results, with a 69 per cent response rate, found that most organisations reported that they implemented between four and ten of the action points, with a mean of 7.37 and median of 8. The survey found that employers found it easier to adopt policy and procedure statements than to achieve the input of disabled people or opportunities for career development. The point relating to retention, retraining and redeployment was not found especially difficult to implement, although a respondent to one of the five pilot interviews commented that it was problematic because the firm had very few disabled employees.

Disability leave

Disability leave arose out of research conducted by the Royal National Institute for the Blind (RNIB), which had identified the problem that employees who lose their sight discover after they leave their jobs that, with special equipment and training, they could have continued working. This was believed to apply to employees who became disabled in other ways.

The initiative involves a work break for employees who become disabled. It advocates an assessment of the difficulties that a newly disabled person faces in work, poses solutions and a time for reflection before any long-term decisions are made, and enables a newly disabled person to be off work whilst adjustments are considered

and implemented. It supposes that disability leave should be part of an overall employee retention policy. It does not imply that employers should guarantee jobs for people who can no longer do them. If the employee needs to be away from work to adjust to the disability while adaptations are being made, time should be offered, not as sick leave but as disability leave

The disability leave pilot project was launched in March 1993 with a number of those employers present at the launch who had signed up to a pilot scheme, including ACAS, Barclays Bank, the head office of what was then the Department of Employment, the Lord Chancellor's Department, McDonalds, Midland Bank, and RNIB. An evaluation of the two year pilot project¹⁴ was based on the experiences and views of 18 employers. Ten of these had adopted, or were already running, an employee retention policy. The report includes an internal study carried out by one of the piloting employers into the cost and savings of implementing disability leave.

The study made the following recommendations, based on the experiences of 18 participants:

For Government:

- The principles which underpin employee retention policies should be included in any relevant publication offering advice in relation to the Disability Discrimination Act.
- The Employment Service should co-operate with other agencies which offer employment assessments in order to establish nationally recognised standards of service.
- Government finance should be available to ensure that employers are not inhibited by cost from operating a retention policy.
- Disability benefits should be available to employees on disability leave who are not paid a salary.
- Disability benefits should be available to employees who receive a partial salary while undertaking a phased return to work.

For employers:

- Employers should adopt a formal policy underlined by the principles of employee retention which include: assessments, adjustments and leave where required.
- Employers should establish a corporate budget for expenses incurred under a retention policy.
- Line managers should work with a nominated representative from the personnel department.

For insurance companies:

- Insurance companies should offer reduced permanent health insurance premiums to employers who have an employee retention policy.
- Insurance companies should adjudicate claims in support of employee retention by offering financial support for disabled employees who need a period of absence.

For working in partnership:

- Various professionals should form an association of assessors to develop, monitor and safeguard standards for disability leave.

There are no available data on the take-up of disability leave policies and practices among UK employing organisations. The co-ordinators of the disability leave pilot are developing instruments to support the process of vocational guidance for newly disabled employees.¹⁵

I.2 POLICIES TO OBLIGE AND ENCOURAGE ENTERPRISES TO RETAIN DISABLED WORKERS IN GENERAL

I.2.1 Obligations and binding agreements to promote the retention of disabled workers in general

Former quota scheme

Prior to 1995, the 1944 Disabled Persons (Employment) Act was the only legal instrument requiring UK employers to employ and retain disabled people. The aims of the Act were: 'to make further and better provision for enabling persons handicapped by disablement to secure employment, or work on their own account...'. The means by which this was to be achieved was through the establishment of a register of disabled people in or seeking employment and by enforcing an obligation on employers to recruit disabled people from such a register. The quota established under the Act was set at three per cent and was applicable to employers with a workforce of 20 or more full-time employees. Failure to fulfil the quota did not in itself involve any penalty. However, if employees were below their quota they would, under the provisions of the statute, have committed a criminal offence if they gave or offered employment to anyone who was not registered as disabled under the Act. The Act, however, allowed the issue of exemption permits.

The approach of successive UK governments, however, was to promote a voluntary code of practice rather than compliance with the 1944 Act, which was unenforced and effectively fell into disuse.

Anti-discrimination legislation

The deficiencies of the 1944 Act and the activities of the growing disability rights movement, together with considerable parliamentary and extra-parliamentary pressure, resulted in the introduction of the DDA in 1995. This Act reversed the unenforced quota scheme, replacing it with a legal right not to be discriminated against in employment (see I.1.1). The DDA does not oblige employers to retain disabled workers. Nevertheless, the Act is likely to have the effect of encouraging the retention of disabled workers, because of a greater awareness of the possibility of discriminating on grounds of disability.

The Companies Act 1985

The Companies Act 1985 places a duty on all UK registered companies employing more than 250 people to include in their annual Directors' Report a statement of the policy applied during the previous year on the recruitment, retention, training, promotion and career development of disabled people. The statutory requirement refers to all disabled people, not merely those protected by law. It was introduced after pressure from an organisation of disabled people (the Association of Disabled Professionals). Although the requirement is referred to in government guidance and the voluntary Code of Good Practice (see I.2.2), it has a very low profile within the range of measures to promote the employment of disabled people and awareness is almost certainly very low. To our knowledge, companies' adherence has never been monitored or its effectiveness researched. As the requirement is not policed or enforced it is more akin to the voluntary good practice measures described below.

I.2.2 Voluntary policies to persuade and encourage enterprises to retain disabled workers

Section I.1.3 outlined a number of voluntary initiatives to encourage enterprises to recruit and retain disabled employees.

Under the Conservative administrations of the 1980s and 1990s there were a number of national campaigns aimed at convincing employers, and the general public, of the abilities of disabled people. These campaigns to change attitudes were a central plank of government policy. They were directed at both recruitment and retention, arguing, for example, that disabled people are more reliable employees, who stay with employers longer, and in whom investment is worthwhile. Simultaneously, 'the business case' for employing disabled people was promoted, and backed by the social partners and some disability organisations. This argues, *inter alia*, that diversity in the workforce is a strength in attracting and retaining custom from the full range of customers.

Before the introduction of the DDA, governments promoted the adoption of voluntary codes of good practice, as an implicit alternative to meeting statutory obligations under the Disabled Persons (Employment) Act 1944. As early as 1977 a 'Positive Policies' campaign was launched to develop enlightened internal company policies. *The Code of Good Practice on the Employment of Disabled People* first appeared in 1984 with a foreword co-signed by the Chairman of the government agency of the time, the Director General of the Confederation of British Industry and the General Secretary of the Trades Union Congress.¹⁶ A section devoted to 'Assisting Employees who become Disabled' outlines the types of action which might be taken for continuing in the same job, a return to alternative work, part-time work and facilitating a delayed return to work. (Later booklets refer to suggestions such as these as 'practical hints'.) The document aims to help companies draw up a policy rather than to set out targets or measures of achievement.

Governments have invested in considerable research to assess the impact the impact of codes of practice and to investigate and monitor enterprises' voluntary policies and practices in both recruitment and retention. Government-commissioned research in the late 1980s estimated that the Code of Good Practice was received by less than one fifth of all employers.¹⁷ Although the Code of Good Practice was fundamentally voluntary, the Manufacturing Science and Finance Union (MSF) successfully argued in an industrial tribunal that whether the Code of Good Practice had been followed was relevant to determining if a dismissal was 'fair'.¹⁸

With the introduction of the DDA, there has been further interest in assessing the adoption of formal policies. The Multi-Purpose Survey of Employers (MPSE) is an omnibus survey of establishments with ten or more employees in Great Britain. The findings below are from the first-wave interviews which were carried out in the spring and summer of 1996, before the implementation of the DDA, covering 1,100 establishments.¹⁹ The survey²⁰ found that:

- 45 per cent of companies covered by the DDA had a formal policy on the employment of disabled people. The likelihood of having a policy increased with company size from 30 per cent of those companies with 20 to 49 employees to 68 per cent for those with 2,000 or more employees. Ninety per cent of these policies were written policies. Seventeen per cent of companies used the Disability Symbol.
- About half of the companies covered by the DDA currently employ disabled people.

- Forty-three per cent of companies covered by the DDA who currently employ disabled people had made changes to the physical environment. Thirty per cent had made changes to working practices to accommodate disabled employees. The most common changes were redeployment or transfer to other duties of those who had become disabled. Twenty-nine per cent had made changes to working time. Nearly half of these had introduced flexible working hours to suit the disabled employee. Eighteen per cent of companies provided support and assistance which commonly involved the provision of a support worker, interpreter or sign-language interpreter.
- The majority of employers did not incur any costs in making adaptations: 61 per cent reported that the cost was nil and 19 per cent spent less than £100 per disabled employee during that last year.^a
- Ninety-four per cent of employers knew about the Disability Discrimination Act. However, 68 per cent of those covered by the Act did not know when the employment provisions were to come into effect.

I.2.3 Financial incentives which encourage enterprises to retain disabled workers in general

Financial incentives to enterprises have never been a significant part of UK policy for either the recruitment or retention of disabled workers, although recruitment incentives are increasingly used to induce employers to take on long-term unemployed people and are built into recent 'New Deal' plans to encourage the employment of young and long-term unemployed people. There is some recent evidence of Training and Enterprise Councils (TECs - see I.3.3) offering private employers subsidies for taking on disabled Training for Work trainees in the form of a contribution to the trainee's allowance or wage; one TEC is reported to have given trainees a voucher worth £1,000 and the employers taking on the trainee received the money over a 20 week period.²¹ These practices seem to be confined to promoting (re-)entry to work and are likely to apply to small numbers of disabled people only.

Access to Work

Access to Work (ATW) is open to people who are disabled within the meaning of the DDA and need extra help because of their disability. The ATW programme is administered by the Employment Service and provides one-off payments or continuous support for disabled people in full and part-time employment, and self-employed people, in the following areas:

- alterations to premises or the working environment if needed for a specific disabled employee
- special equipment or adaptations to existing equipment to suit particular needs
- deaf awareness training for co-workers
- a support worker if practical help is needed either at work or in getting to work
- transport to work if public transport cannot be used because of a disability
- communication for deaf people at interview
- a reader at work for someone who is blind or has a visual impairment
- other practical needs.

^a At 31 March 1998, one UK pound was equivalent to 1.6815 US dollars.

ATW replaced several separate 'special schemes' (such as Special Aids to Employment, Adaptations to Premises and Equipment, Personal Reader Service and Assistance with Fares to Work) for which resources were limited and where waits for assistance were commonplace.

When introduced in June 1994 it had three main aims:

- i) to provide support to overcome obstacles to employment caused by disability;
- ii) to enable disabled people to compete for employment on an equal basis with their non-disabled colleagues; and
- iii) to encourage employers to recruit and retain disabled people by offering practical help.²²

ATW is thus an incentive to both the employer and the employee. Originally, employers had nothing to pay unless the help provided brought general business benefits. (The original intention to impose charges from the outset was strongly resisted by lobbying voluntary organisations.) However, the element of incentive to employers was reduced by the introduction of employer charges after a review following a first pilot year without charges. Following changes introduced in 1996, ATW now pays up to 80 per cent of approved costs between £300 and £10,000 for disabled people already in employment, and 100 per cent of the approved costs above £10,000. It treats unemployed people more generously than those already in employment: it will pay 100 per cent of approved costs for disabled people previously unemployed (or in a job for less than six weeks) or for those changing employer. The new Labour Government announced in June 1997 that the charge above the £300 threshold would not apply beyond the first year of introduction of a provision. Under these rules, the most that an employer has to pay for any employee over a three-year period is £2,240. The national ATW budget is in the order of £19 million.

Under the 1996 revisions, a grant is now given to the employer or to the employee to purchase the equipment/services that the employee needs. Previously, ATW was designed around the needs of the disabled individual, who could have up to £21,000 spent on his or her behalf over a five-year period on approved measures. Under the current arrangements, employers are normally expected to purchase the support measure as agreed with the Disability Employment Adviser (DEA) and the disabled employee; the employer claims the state contribution towards the cost once the measure has been procured.

The original aim of ATW was to increase the number of disabled people in work: the intention was that 50 per cent of entrants to ATW should be unemployed. A survey commissioned by the government from Social and Community Planning Research (SCPR)²³ in 1995, one year after its introduction, found that 92 per cent were already in work when they applied. In December 1995 support was refocused on the main priority of helping unemployed people into work rather than retaining people who became disabled; the proportion was set at 42 per cent for unemployed beneficiaries, 52 per cent for employed people and six per cent for the self employed. In the quarter ending September 1996, ATW supported 4,233 people in work with continuous help, helped a further 456 new users in work, and helped 334 people to obtain work.²⁴

The SCPR study (Beinart *et al.*, 1996) reports that 18 per cent of employers took ATW recipients after an offer of help from ATW. Other studies suggest that there were difficulties in accessing information and low awareness of ATW, as well as confusion over the rules and delays in obtaining support.²⁵ ATW is being evaluated once again in the second half of 1997 in research commissioned by the government from the Institute for Employment

Studies (IES). The evaluation includes the effects of the 'cost-sharing' changes applying to people already in employment and their employers.

Access to Work is discussed further in Parts III and IV.

Supported Employment Programme

The Employment Service's Supported Employment Programme (SEP) is designed primarily for people seeking entry to work who are otherwise unable to obtain or retain employment because of the severity of their disability. There are three elements: special workshops, the Supported Placement Scheme, and Remploy (a private company limited by guarantee which receives government grants) which provides both workshops and supported employment. Leaving Remploy aside, over 200 providers contract with ES to provide workshops and supported placements.

Within SEP, the Supported Placements Scheme (SPS) provides funds to enable employers to take on people who are no longer 100 per cent productive. In essence, the payment for the under-productive element of the disabled employee is transferred to a sponsor organisation which administers the scheme. The individual disabled person is placed with a host employer and the productivity of that employee is assessed. If they are assessed to be 60 per cent productive, as compared to non-disabled people carrying out the same job, then the employer would pay 60 per cent of the employment costs and the sponsor organisation would fund the remaining salary costs with external support from the Government.

It has been reported²⁶ that the SPS has been used for people who become disabled in the course of their existing employment, although the extent of usage is not known.

The SPS, and its associated funding, is used to sustain severely disabled people in employment as well as to find them jobs in the first place. Funding may be used flexibly and not necessarily on wage subsidies. Many SPS providers believe that employers most value the promise of timely support in a crisis and some providers invest in support on the job, including workmate and buddy schemes, with or without wage subsidies. A report on six government-commissioned focus groups run in September 1996, involving 40 representatives of voluntary bodies and local authorities providing either SPS, workshops or both, says that SPS providers felt that in the future provision of good support service to employers would give better 'leverage' than direct wage subsidies, which, in any case, many better employers were reluctant to accept because of the effect on their other workers and a feeling that it stigmatised disabled workers.²⁷ The stigmatisation of disabled workers has been a long-standing objection to wage subsidies on the part of disability campaigning groups in the UK.

Job Introduction Scheme

The Job Introduction Scheme (JIS) has been run by the Employment Service (ES) for twenty years. It is not a specific job retention measure but is designed to encourage employers to maintain the employment of new entrants. It enables a private sector employer who takes on a disabled worker, considered suitable for the job by ES personnel, to be paid a sum of £45 per week (the amount of the grant has not kept in line with inflation) towards wages during a 'trial period', usually six weeks but exceptionally extended to a total of 13 weeks. The job must be expected to last for at least six months after the trial period has ended. The latest available figures suggested that numbers using the scheme have dropped significantly; in 1988/89 it provided help to just over 2,000 people. An evaluation report found that 30 per cent of participants were aged under 25.²⁸ The operation

of JIS is being evaluated in the second half of 1997, in part to examine whether there is still a need for it in the light of more recently introduced mainstream ES Work Trial and Work Placement schemes and the Access to Work scheme.

I.3 POLICIES AND PROGRAMMES TO SUPPORT DISABLED EMPLOYEES AT RISK TO RETAIN THEIR EMPLOYMENT

I.3.1 Mechanisms to support the rights of employees whose continued employment is at risk because of disability

Industrial tribunals

A disability advocacy organisation, the Representation Advisory Project (DDA-RAP), was established in the autumn of 1997 to represent disabled people in industrial tribunals. It is likely that an individual taking a case of disability discrimination to a tribunal will have already been dismissed, and this organisation is unlikely to represent disabled people in an effort to assist them in retaining their job. This project takes referrals from the Disability Law Service or the Royal Association on Disability and Rehabilitation (RADAR). It provides legal advice through a network of employment lawyers who give their services free of charge.

There is some early evidence that people represented by trade unions have won cases of alleged disability discrimination at an industrial tribunal:²⁹

In one case, the Transport and General Workers Union represented a woman who was dismissed by her employers after consultants recommended that a special chair be bought for her. The tribunal unanimously agreed that her employer had unfairly dismissed her by not modifying equipment so that she could sit and comfortably carry out her work. The tribunal awarded the individual £1,200 in compensation and the employer was ordered to reinstate her.

The MSF trade union represented a member in a case involving Myalgic Encephalomyelitis (ME). The individual was dismissed from her job as a health visitor with an NHS Trust after a 10 month sickness absence. She was in the middle of talks about a gradual return to work when she was dismissed just three days after the DDA came into effect. When she took her case to a tribunal the employer decided to settle out of court, paying £16,000 in compensation.

The DDA places a duty on the Advisory Conciliation and Arbitration Service (ACAS) to provide conciliation where complaints of discrimination are made to an industrial tribunal. It may be that some employers, as a consequence of the intervention of ACAS or others providing representation or conciliation, may be willing re-instate workers previously engaged but having left their employment as a direct or indirect result of disability. To date there are no data available on the operation of conciliation services under the DDA.

Disabled workers in the UK have no legal rights to representation in the workplace other than those established through voluntary agreement.

Works Councils

With the new government's support of the European Union (EU) Social Chapter and the mandatory provisions for Works Councils within multinational corporations operating in Europe, it is expected that employee representation will develop over the next few years in Britain. Works Councils will, in theory, be able to delay dismissal, seek expert advice, pool resources across industry, and be better informed on enterprise policy. The Works Councils have the potential to formalise and improve the claims to job retention by disabled workers.

I.3.2 Financial incentives directed at employees whose continued employment is at risk because of disability

The UK has been unusual in its emphasis on incentives to potential employees rather than to employers. The notions of reducing benefit dependency and increasing incentives to work have underpinned policy for the last twenty or so years. (A special in-work disability benefit, Disability Working Allowance, designed primarily as an incentive to take up work, but operating as a supplement to low wages for disabled people already in work, is described in Part II.)

Funds available under the Access to Work (ATW) scheme have been outlined in I.2.3. They can now be paid either to the employee or to the employer. As noted in I.2.3, the original intention was to promote (re-entry into employment). The scheme treats disabled people in employment less generously than those taking up work or changing employer. Disabled people who are self-employed and in receipt of ATW payments pay £100 towards the costs in the first year.

Disabled people with reduced productivity, who are unable to obtain or retain employment because of the severity of their disability, are eligible for the Supported Employment Programme (formerly referred to as sheltered employment) outlined in I.2.3. Within it, the Supported Placement Scheme (SPS) can, in principle, provide for disabled people to be retained in mainstream employment but it is much more often used for entry and re-entry to employment (see I.2.3). This scheme can, in principle, enable people with progressive impairments to be retained in employment as their productivity decreases. The contribution from the employer can be tapered on a sliding scale according to their productivity. However, there is no evidence of it being much used for this purpose.

Earnings through the Supported Employment Programmes are very low. The Supported Employment Earnings Survey, which is carried out every three years, found in 1995 that:

- about 70 per cent of the clients in Supported Employment earn less than the lowest paid ten per cent of all earners in open employment and only about 1.5 per cent earned above the median of all earners in open employment. Supported Employment is still dominated by manual workers (77 per cent);

- in Supported Placement Schemes there was one female for every two males and in workshops there was one female for every 3.7 males. Women's earnings are improving but are, on average, still £9 per week less than those for men;
- compared to the 1992 survey, the difference between the average wage for supported placement schemes and for workshop employees has narrowed from £13.80 per week to £6.41 in 1995.

I.3.3 Programmes which support a move to another employer or to self-employment

There are no specific programmes which aim to support a direct move to another employer or to self-employment. An assessment by the Placement Assessment Counselling Team (PACT) (a disability-specific service under the auspices of Employment Services) may make recommendations for such a transition. Disability Employment Advisers (attached to PACTs and based in Job Centres) can advise disabled people seeking employment with another company or who wish to consider setting up in self-employment. Job Centres can provide mainstream support. But, in essence, the move to another employer or participation in self-employment is available to disabled people in the same way as it is to others. High Street recruitment agencies can also provide advice to disabled people who are seeking to transfer to another employer.

Help for self-employment can be derived from a number of *mainstream* sources. Some *Training and Enterprise Councils (TECs)* have provided supplementary allowances to disabled people using their generic Enterprise Allowance schemes to support self-employment. A study in 1995 found a low usage of TEC support for self-employment by disabled workers: it quoted ES estimates that about five per cent of those on Enterprise Allowance in 1995 had disabilities or long-term health problems; furthermore, the TECs did not consider the disabled population when promoting self-employment options.³⁰ The study noted the inaccessibility of training venues for physically disabled people and the lack of information to disabled workers, for example about the fact that adaptive equipment is available to disabled people while training for self-employment. Local Enterprise Agencies, Chambers of Commerce and mainstream bank advisers are other potential sources of information. *The Prince's Youth Business Trust* is a charity which was specifically set up to help young disadvantaged people become self-employed. It helps disabled people aged between 16 and 30 to set up their own business by providing them with a £1,500 bursary or a £5,000 interest-free loan.

Specialist sources include the *Blind Business Association*, an organisation that operates as a network to help blind people seeking to set up their own business to obtain advice from other blind people already in self-employment.

I.4 BENEFICIARIES

I.4.1 Impact of definitions of disability and eligibility criteria on access to and coverage of policies

The definitions of disability and a disabled person under the Disability Discrimination Act are now used for access to specialist services for disabled people provided by the Employment Services. A different definition is used for eligibility for the in-work incentive benefit Disability Working Allowance (see Part II).

DDA definitions of disability

The Disability Discrimination Act defines disability as 'a physical or mental impairment which has a substantial and long-term adverse effect on a person's ability to carry out normal day-to-day activities'. Also covered by the Act are severe disfigurements, progressive conditions which are likely to become substantial, and people who have had a disability covered by the Act in the past and have recovered.

The publicly stated intention behind this definition was to exclude trivial or frivolous claims for protection. This is understandable, as the identification of disabled people within the labour market will inevitably be problematic. As Doyle (1993) has pointed out, a definition of disability must be both inclusive and exclusive: including individuals outside the popular perception of disability, yet exempting idiosyncrasies, human traits and transient illness.

The Act relates to the retention of people who are already disabled, people who become disabled and people who have been disabled in the past.

The term *impairment* is not defined but is likely to call for a medical assessment, especially as the term 'mental impairment' is stated as including an impairment resulting from or consisting of a mental illness only if it is clinically well recognised. This will call for expert medical opinion or evidence in litigation.

'*Normal day-to-day activities*' are considered to be normal activities carried out by most people on a regular basis, usually involving one of the following broad categories:

- mobility
- manual dexterity
- continence
- the ability to lift, carry or move ordinary objects
- speech, hearing or eyesight
- memory, or ability to concentrate, learn or understand
- being able to recognise physical danger.

It may be difficult for persons with well-recognised mental illnesses to show that these have an adverse effect on normal day-to-day activities, especially as work is not listed.³¹

Excluded conditions: There are some specified excluding conditions which include: hayfever; voyeurism, exhibitionism and sexual or physical abuse of others; alcohol or nicotine addiction; pyromania; and kleptomania.

It might have been expected that some people with recognised disabling conditions would have difficulty in making a case for coming under the definition in adversarial industrial tribunal proceedings. These might include those with stress related impairments, repetitive strain injury (or upper limb disorder), those with certain types of mental illness or learning disability, and those who experience back pain. An industrial tribunal case illustrates this last condition.

Rowley v Walkers Nonsuch Ltd

As a result of a back injury suffered at work, Mrs Rowley went on sick leave. She had been off work for six months, when her employer dismissed her after 22 years service, on grounds that it could not reasonably wait any longer for her to return. It stated the reason to be incapability due to ill health. Dismissing her claim under the DDA, an industrial tribunal found that her condition could not be said, on the evidence, to fall within the definition of disability under the Act. 'We do not find it possible to say that she had a physical impairment which had, at that time, a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. The employers in late 1996 could not predict the future, but at that time we would not say that the condition of which we have heard came within that definition'.

(23 April 1997; Case No: 2900173/97 - heard in Shrewsbury).

Nevertheless, unofficial information indicates that the largest group of cases coming before tribunals relates to stress or depression, and the second largest to ill-defined chronic conditions.

Employer size

The employment provisions of the Act exempt employers who employ fewer than twenty employees. There is provision under the statute to adjust this threshold in a downward direction only, but not to remove it completely, following a review. The change must come into force within a year of the review starting. The present Government has indicated its intention to reduce this figure within their first term of office. On 3 December 1997, the Government announced a review.

Just over one-third of the workforce is employed in firms of under 20 employees. According to the Equal Opportunities Minister, 'around one million private sector employers (95 per cent of private sector employers) and almost a quarter of all disabled workers are currently excluded from the employment provisions of the Act'.³²

Excluded occupations

The Act does not cover people in active service in the armed services, police force, fire brigade and prison service. Nor does it cover people working on board ships, aircraft or hovercraft. Disabled people and their organisations who adhere to the 'social model' of disability object to the implication attached to the notion of 'excluded occupations' that disabled people as a group are incapable of such occupations. Consideration of excluded occupations is in the brief of the government-appointed Task Force set up in late 1997.

The social definition of disability

The 'social definition' of disability is not recognised by official definitions of disability. The British Council of Disabled People (BCODP) believes that disability should be characterised as 'the loss or limitation of opportunities to take part in the mainstream of life in the community on an equal level with others, due to physical

or social barriers'.³³ Disabled workers who feel that social barriers are affecting their work prospects may have difficulty in gaining protection or understanding.

L4.2 Disabled workers who benefit and those who miss out

It has already been stated that some disabled workers, and it is thought to be a significant number, will miss out on job retention policies inspired by the DDA and only applying to those people who come under the new legal definition of disability. The legal definition also may not cover some individuals who regard themselves as disabled, or who are treated by others as if they are disabled.³⁴

There is, however, an early indication that large UK employers, particularly those with a history of addressing employment discrimination, are not constructing their disability and employment policies solely around the rights of employees or potential employees who come within the new definition of a disabled person. All of the twelve employers approached for the purposes of this report (as detailed in Part V) were in the process of revising, or had revised, their policies on disability and employment; all reported their intention to apply at least the principles of the DDA to all disabled people and not just those covered by the new definition. The adoption of voluntary policies is, of course, discretionary and employers are free to choose who will benefit. Policies such as Disability Leave are likely to benefit select individuals most valued by their employers.

It is difficult at this stage to assess which disabled people will benefit from job retention policies inspired by the DDA and those that will not. At this stage, we can only speculate on some of the characteristics which, in our view, may influence outcomes.

Those more likely to benefit

- Disabled people who possess educational, and particularly vocational, qualifications.
- Disabled people working or applying for work in enterprises with a history of accommodating disabled employees and where there has been rapid technological advance and a growth in flexible working practices, e.g. generally within the service sector of the economy.
- Younger workers.
- Those less likely to experience the added disadvantages associated with race, gender, social class and age.

Those more likely to miss out

- Disabled workers employed in enterprises where there is limited scope for alternative employment.
- Disabled workers employed in jobs and industries involving manual work e.g. engineering, mining and construction.
- Older workers.
- Disabled workers employed by or applying for jobs in enterprises that have little or no history of addressing the needs of disabled employees.
- People with mental illness.
- People with short-term impairments, which last for less than 12 months and are not expected to recur.
- People with asymptomatic conditions like HIV infection (or, for example, somebody who is found to be zero positive for rheumatoid factor on blood screening but does not yet have the symptoms of rheumatoid arthritis but could be expected to do so).

Workers not yet defined as 'disabled'

Workers whose existing condition deteriorates can miss out because the adaptations required to accommodate the lower productivity and/or sickness absences are generally not instituted early enough. There is no mechanism for early intervention by public support agencies. Many workers who suffer constant back pain, occupational stress, or diffused repetitive strain injury (RSI) may find it difficult to persuade state agencies, GPs (General Practitioners / family doctors) and employers of their need for special support. They may be forced to exaggerate their claims or wait until their condition deteriorates before attention is drawn to their concerns about job retention. The dilemma for workers who have developed an injury, illness or condition during the course of employment is that they must present themselves as disabled if they are to enjoy the protection of the DDA.

I.5 JOB RETENTION POLICIES IN CONTEXT

I.5.1 The salience of policies for job retention in the overall context of national policy to promote the employment of disabled people

In the UK there is a general lack of policy designed specifically for the retention of disabled employees. Disability Employment Advisors (DEAs) and Placing Assessment and Counselling Teams (PACTs) provided by the Employment Service (see Part III) can provide support to individual disabled workers who are in danger of losing employment through disability. However, the main emphasis of the Employment Service is directed at unemployed disabled people. Among the non-governmental disability pressure groups and service-providing organisations only RNIB has paid particular attention to job retention (see the Disability Leave initiative outlined in I.1.3).

The main policy emphasis has rested on reducing the escalating numbers of people claiming long-term social security incapacity benefits by tightening eligibility criteria and lowering the level of benefit. Reducing entry to the Incapacity Benefit through intervention before the employment relationship is lost has not been part of government strategy. Nor has active intervention to promote the early return to work of disabled people featured prominently in UK policy.

Since the Labour Government came to power in May 1997, job retention has emerged as a policy issue. Ways of assisting disabled people to retain employment (and so avoid dependency on long-term disability benefits) are being explored as part of the 'New Deal' for young and long-term unemployed people. Among the hundreds of non-governmental projects at a local level (many of which are supported by European Commission and/or charitable funding), a handful are now focusing on providing support to employed people who become ill or disabled and to their employers. As these projects operate in isolation from one another, applying lessons from practice is difficult.

Among pressure groups of and for disabled people there is some reluctance to support policies which promote the job retention of those who become disabled, if this might divert attention from the needs of people who are already disabled, particularly those disabled from birth or childhood, and those who have never worked. It should be noted that employment support for people with congenital physical impairments and people with learning difficulties is a comparatively recent development.

I.5.2 Most prominent job retention policies

Job retention for all employees has been somewhat undermined during the 1980s and 1990s. There have been significant erosions of employee rights, and unions have had a decreasing influence on employment policy. There is much greater movement of labour within the employment market and increasing use of short-term contracts. It is predicted that someone joining the labour market will make significant job changes seven or eight times during their employment career. These trends in national policy have a significant impact on the employability of disabled people. They have made it easier for employers to avoid any social, moral or legal obligations they have to members of staff who are or who become disabled. The introduction of the DDA is expected to have a significant impact on the retention of disabled employees, with the acknowledgement of disabled people's rights in employment and the heightened awareness resulting from the introduction of new legislation.

I.5.3 Policies affecting the retention of newly disabled workers

Disability Discrimination Act

The DDA imposes a duty on employers to retain people who become disabled by making a reasonable adjustment. The requirements of this new legislation which affect employers employing 20 or more people will encourage employers to develop policies and procedures to address these significant issues. It is as yet too early to tell how many employers have developed practical policies in this area. It would seem that, at this moment in time, only the larger companies have responded to these new demands, with the effect trickling down through medium-sized businesses to small to medium-sized enterprises. A similar trickle-down response was experienced with the introduction of Health & Safety at Work legislation.

It is the opinion of the informants that the duty of reasonable adjustment imposed by the DDA has potential for job retention in the following areas:

The built environment and the provision of aids and adaptations: employers are under a duty to consider changes to the built environment or to obtain equipment to alleviate the work-related effects of disability.

Dismissal on the basis of poor performance: managers operating these procedures must now consider the provision of a reasonable adjustment to the physical environment or working arrangements applying to a disabled employee (as defined by the Act) before any action is taken to initiate disciplinary procedures or other detrimental action.

Sickness policy and sickness absence policy: the Act says that less favourable treatment of a disabled person will be justified only if the reason for it is both material to the circumstances of the particular case and substantial. The DDA Employment Code of Practice provides an example of how this principle may be applied to sickness absence:

A factory worker with a mental illness is sometimes away from work due to his disability. Because of that he is dismissed. However, the amount of time off is very little more than the employer accepts as sick leave for other employees and so is very unlikely to be a substantial reason.³⁵

Redundancy terms: under the Act, if a criterion for redundancy would apply to a disabled person for a reason relating to the disability, that criterion would have to be 'material' and 'substantial' and the company would have to consider whether a reasonable adjustment would prevent the criterion applying to the disabled person at all.

Training: the provision of training to a disabled person in order for the individual to be retained in employment, or arranging for him/her to be given training, is listed in the Act and Employment Code of Practice as an example of a step an employer may have to take in order to comply with the duty to make reasonable adjustments.

Dismissal on the grounds of disability or ill-health: medical examinations, inquiries, questions or screening will constitute 'arrangements' made for the purpose of determining who should be offered employment within the Act. If the effect of such arrangements was to amount to less favourable treatment of a disabled person for a reason related to disability, the employer will have to show that the treatment was justifiable. Even if all applicants and employees were medically examined, the effect might be to discriminate indirectly against disabled persons if the employer uses the evidence gleaned from the examinations without further individualised inquiry as to the ability to do the job or another job within the establishment.

Health and safety: the DDA prohibits blanket exclusion of people with specific disabilities on the grounds of health and safety. Any determination of a direct threat to health or safety must now be based on an individualised assessment of objective and specific evidence about a particular individual's present ability to perform job functions, not on general assumptions or speculations about a disability. For example, an employer who excludes all persons who have epilepsy from jobs that require use of dangerous machinery will be required to look at the life experience and work history of an individual who has epilepsy. The individual evaluation should take into account the type of job, the degree of seizure control, the type(s) of seizures (if any), whether the person has an 'aura' (warning of seizure), the person's reliability in taking prescribed anti-convulsant medication, and any side-effects of such medication. Individuals who have no seizures because they regularly take prescribed medication, or who have sufficient advance warning of a seizure so that they can stop hazardous activity, would not pose a 'direct threat' to safety.

Disability Leave policy

Disability Leave policy has the potential to contribute to the retention of newly disabled workers. It operates in a similar way to maternity leave but currently lacks the same legal status. In essence, it allows a newly disabled person a period of time to progress through rehabilitation, retraining and, if necessary, relocation to another position within the same organisation. As this is an entirely discretionary policy, however, employers are free to choose which disabled employees it appears most economically sensible to retain.

1.6 IMPLEMENTATION OF JOB RETENTION POLICIES

1.6.1 The effectiveness of institutional arrangements for monitoring and enforcement

Any disabled person whose job is being threatened by their employer is entitled to take their case to an industrial tribunal. Once a complaint has been lodged with an industrial tribunal the information is recorded by the Central Office of Industrial Tribunals in England or Scotland. These offices publish monthly data on the total number of industrial tribunal cases under the Disability Discrimination Act and a breakdown relating to dismissal,

detriment, recruitment and reasonable adjustment. In addition, once the outcomes of specific industrial tribunal cases have been determined, the findings are made available for a fee from the Central Office of Industrial Tribunals. These reports on individual cases of discrimination can run to 30 or 40 pages. If the disabled person disagrees with the findings of the industrial tribunal, then they can appeal to the Employment Appeals Tribunal or Higher Courts if necessary.

As already noted, a specific problem with the enforcement procedure is that it is the sole responsibility of the disabled person to take court action. There has been no body established under the Disability Discrimination Act to support test cases, as currently exists under the Race Relations Act and the Sex Discrimination Act with the Commission for Racial Equality and the Equal Opportunities Commission. However, the current government considers the Act to be flawed and is committed to enforceable and comprehensive civil rights for disabled people.

The number of cases falls far short of the initial government estimate of 3,000 cases per annum. Between 2 December 1996 when the DDA came into operation and the middle of July 1997, 483 applications were made to industrial tribunals under the employment provisions of the Act. According to a House of Commons written answer from the Employment Minister, '13 of these applications have been settled through ACAS, 10 applications were withdrawn and a further six settled privately without a hearing. Twelve applications have been heard by an industrial tribunal, of which one was successful.' By 10 October 1997 there had been 56 decisions from the industrial tribunals; 16 of these were adjournments where further evidence was needed. In six cases the applicant (i.e. the disabled person) was successful. The reasons for failure are of some interest:

- ten cases failed because basic procedural criteria were not met: the employer employed less than 20 people (6 cases); the act of discrimination occurred before 2 December 1996 when the provisions came into force (2 cases); or the applicants were beyond the three months time-limit for submitting applications (2 cases)
- six applications failed because it was decided that the employer was not aware of, or could not reasonably have been expected to be aware of, the disability
- in two cases the tribunal found the person to have dismissed not because of their disability but because of their capability or redundancy
- in six cases the tribunal agreed that the employer was justified in not making a reasonable adjustment
- five claims failed because the applicant could not show that their impairment adversely affected their normal day-to-day activities.³⁶

The Government monitors employers' awareness and activities through the Multi-Purpose Survey of Employers (see I.2.2)

I.6.2 Factors which affect the adoption of voluntary job retention measures and take-up of financial incentives by enterprises

Historically, the employment and retention of disabled people have been seen as a problem. Employers have tended to focus on the cost of retention of someone who becomes disabled and have assumed that the limits imposed by an individual's impairment will have a significant impact on their ability to work.

Recent campaigns by government, the Confederation of British Industry, the Trades Union Council (TUC), the Employers' Forum on Disability', some disability organisations and some disabled business people (*inter alia*) for the 'business case' have argued the advantages of having people in the workforce who are already disabled. One strand of the argument for employing already disabled people has been to emphasise the loyalty, willingness and good attendance record of disabled people; this has been criticised as patronising and for pressuring disabled employees to do more than their non-disabled peers. Another argument is that disabled people are more likely to have valued skills of time management, diplomacy and problem-solving.³⁷

The 'business case' arguments, both for recruiting disabled people and for retaining employees who become disabled, revolve around the effect on staff morale, increased staff loyalty, reputation as a good employer and as a responsible member of the community, and increasing access for customers if adjustments are made for employees. Companies are now encouraged to think that they are better placed to devise and develop products and services that suit their customers' needs if their employees' profile reflects the profile of their customers.

The argument gaining most ground is that it is in employers' interests if the workforce reflects the diversity of their clientele and of the communities in which they operate. This diversity goes beyond disabled people to include older workers, younger workers, women, people from Black and minority ethnic communities. There has been a general trend in large organisations away from viewing equal opportunities as adversely affecting the business, towards understanding how valuing a diverse workforce is good for the company.

With respect to the retention of people who become disabled, the main argument is cost-based. The following is a typical argument:

If an employee has become disabled 15 years into their employment with a company then the company will have invested a great deal of resources in their training and salary costs over that period of time. This investment, which is quite considerable, would be wasted if the individual was retired on ill health grounds if they became disabled. In addition, if employers are to retire disabled people on ill health grounds, then there are further costs to consider. These include the pension and other ill health retirement benefits. The Post Office has recently calculated that the average cost of retiring a member of staff on ill health grounds is between £60,000 and £80,000 per person. When this is considered in light of the average cost of a reasonable adjustment (£300 per disabled person) then there is little justification on cost grounds for the dismissal of newly disabled employees.

(Stephen Duckworth, Disability Matters Limited)

Another reason which supports the business case for the retention of employees who become disabled is the requirement to avoid litigation. Compensation payments under the Race Relations Act and Sex Discrimination Act have been escalating substantially over the last two years. It is not unusual now to hear of figures of over £100,000 compensation. When this figure is added to the staff costs and legal fees incurred in fighting a case at an industrial tribunal, it is not difficult to realise that there is an economic imperative to avoid litigation. In addition to the costs of litigation, it can also lead to a great deal of adverse publicity for the employer. However, industrial tribunal awards under the DDA to date have not reached anything like such large sums.

The 'business case' is a relatively new phenomenon and, in many organisations, there is little awareness or dissemination of information about the potential benefits of employing disabled people. The Employers' Forum on Disability (see I.1.3) encourages its members to think in this way. The majority of companies involved in the Employers' Forum are large businesses, so the number of employees, turnover and profitability of the business are bound to have an impact on the adoption of voluntary job retention measures. In addition to this, it is likely that the seniority of the employee will have an impact on whether they are retained or not. For example, a senior manager within a business who becomes disabled is more likely to be retained than a shop-floor worker; thus, there are equity problems with the business case argument.

There are also 'business culture' issues to take into consideration. The 1980s became notorious for the downsizing, outsourcing and de-layering of companies. It is inevitable that this would have an adverse effect on the retention of disabled employees. As we progress through the second half of the 1990s, companies are much more focused on creating a culture within their businesses that values their employees as their greatest asset. Programmes initiated by the government, such as Investors in People (IiP), which encourage companies to reach certain standards as regards their employees, may help businesses retain disabled people.

Among the most significant factors that will affect the voluntary retention of disabled people are institutional values and methods of working. While large organisations, in both the public and private sectors, are developing seemingly excellent policies for the retention of disabled people on paper, the real issue is how will these policies work in practice. For example, it is unlikely that a Personnel Manager who has been responsible for drafting a company's approach to the Disability Discrimination Act will appear at an industrial tribunal. It is far more likely that a line manager who may be ill-informed about the employability of disabled people may, without any malice or ill intention, discriminate against disabled employees. The question is how to ensure that everybody working within organisations understands and implements their new duties under the Disability Discrimination Act.

Insurance

A further factor which affects the voluntary retention of disabled people is the investment by businesses in Permanent Health Insurance (PHI) Policies (see also Part II). These enable the employer, through their insurer, to provide a lump sum payment to a member of staff who becomes disabled. This helps the employer to make disabled employees redundant or to retire them on the grounds of ill health, as the insurance policy creates a buffer against the costs of medical retirement. It also helps to excuse the employer from any social or moral obligation they feel they have towards the disabled employee, because the individual is receiving a substantial lump sum payment. Insurers are not much motivated to influence job retention strategies on the part of employers. The British system of public health care and social security benefit support absorbs much of the liability of insurer and/or employer for ill health at work.

I.6.3 The role of disabled people's organisations

Disabled people and their organisations are becoming politicised. They have illustrated their dissatisfaction with the significant disadvantage experienced by disabled people in everyday society, through demonstrations and direct action. The press is very interested in the work of disability activists and, with reports in newspapers and on local and national television, it is likely that employers will become increasingly aware of disability as a human rights issue.

Other disabled people, training organisations and consultancies are providing a wide range of advice to employers and service providers to promote an awareness of the employment potential of disabled people. The DDA has been a catalyst for increased activity. These organisations will have some impact on the dissemination of information about the Disability Discrimination Act and on voluntary measures to retain disabled people and those employees who become ill or disabled.

I.7 INTERACTIONS BETWEEN EMPLOYMENT POLICIES AND PROGRAMMES

I.7.1 Ways in which employment policies complement or contradict one another

Research published in 1997 in the Equal Opportunities Review³⁸ revealed that, since the introduction of the Disability Discrimination Act, an increasing number of organisations had developed policies on the employment and retention of disabled employees, demonstrating that the Act has had a significant impact on the introduction of revised or new policies. The arguments for the business case for retaining disabled people and the Disability Discrimination Act appear to interact. Nevertheless, despite the considerable attention given to monitoring the existence of policies, there is as yet little evidence of how they are put into effect.

Policies that may contradict the retention of disabled people include the provision of Permanent Health Insurance (see I.6.2). These policies give the employer an easy excuse to retire disabled people on ill health grounds, in a way that the employer considers causes little concern or harm for the disabled person. There is anecdotal evidence that some disabled employees are tempted to retire on health grounds because of the perceived impossibility of bringing a successful case against employers known to have a successful record in winning cases brought on grounds of sex and race discrimination. In the early days of the DDA employees may also lack information about their rights and support in bringing a case.

I.7.2 Impact of the distribution of responsibility for employment policy

National responsibilities

The United Kingdom is made up of England, Wales, Scotland and Northern Ireland. The first three countries constitute Great Britain. There is currently a single Parliament for the whole of the UK.

Separate Secretaries of State for Wales, Scotland and Northern Ireland are responsible for some, but not all, aspects of policy in their countries and for certain functions administered by the Welsh Office, the Scottish Office and the Northern Ireland Office.

Policy documents, such as White Papers, and subsequent legislation, are often promoted jointly by the Secretary of State for the relevant government department in England and by the three Secretaries of State for Scotland, Wales and Northern Ireland. Legislation is often constructed separately for Northern Ireland. However, this formal situation is often ignored by commentators who tend to refer only to policy actors in England. Agencies of government departments tend to cover the whole of Great Britain, with a separate agency in Northern Ireland.

Although the situation sounds complex, there seems to be no real problem arising from the national distribution of responsibility for policy.

Departmental responsibilities

Since the merger of the Employment Department with the Department of Education in 1995, responsibility for most elements of employment policy rests with the Department for Education and Employment (DfEE) in England and Wales. A similar merger took place within the Scottish Office.

In England, ultimate responsibility for the employment of disabled people lies with the Secretary of State for Education and Employment. The Parliamentary Under-Secretary of State for Employment and Equal Opportunities has more direct responsibility for policies relating to the retention of disabled employees. Both Ministers work within DfEE, with specific tasks in respect of discrimination and disability being administered by the Disability Policy Unit (DPU). The DPU and ministerial responsibilities were transferred to DfEE from the Department of Social Security (DSS) by the incoming Labour government in May 1997. Previously, only the employment provisions of the DDA were overseen by the DfEE, which has the National Council for the Employment of People with Disabilities (established under the 1944 Act). Now, the DPU is responsible for activities within DfEE and also co-ordinates all disability-related policies such as those within DSS, which is responsible for Incapacity Benefit and other disability benefits. The DfEE also contains the Secretariat for the Disability Council (set up under the DDA). This structure creates one administrative body with responsibility for disability issues at a senior level within Government Departments, but imposes a considerable burden on the DPU to cover such broad subject areas.

Agency functions

The Employment Services (ES) agency within DfEE operates Access to Work, oversees PACTs and the Supported Employment Programme, and offers support to unemployed disabled people within its mainstream services, covering all of Great Britain. In Northern Ireland, a Training and Employment Agency relates to the Department of Economic Development. The main concern of ES is with (re-) entry to employment.

The DSS is responsible for social security benefits policy. The ES has joint responsibility with the Benefits Agency (BA, controlled by DSS; in Northern Ireland the Social Security Agency relates to the Northern Ireland Department of Health and Social Security) for administering employment-related benefits. The Benefits Agency administers social security benefits, including Disability Working Allowance (the only in-work disability-related benefit).

Policy responsibilities for training for unemployed people, vocational training for young people, employer-based training and support for enterprises in Great Britain rests with local employer-led private companies (Training and Enterprise Councils, or TECs - Local Enterprise Companies (LECs) in Scotland). They are responsible for about two-fifths of the ES budget. They contract training services to a range of public, private and voluntary sector providers. TECs and LECs have discretion to fund programmes which may vary quite considerably from one TEC or LEC to another. TECs and LECs are focused mainly on unemployed people, although they can provide support to sustain self-employment.

There has been criticism of the split in functions between the ES and BA in relation to the lack of co-ordination between agencies which might assist disabled people in entry or return to work. Job retention as yet is not a high

profile issue for these two agencies. It is likely that the historical lack of a joint approach (and in some areas antipathy) between the agencies will be problematic in relation to the retention of employees who become disabled. However, changes may occur under as yet undisclosed plans for the New Deal.

I.8 LINKS TO LABOUR MARKET FACTORS

I.8.1 Elements of labour market policies which influence the effects of job retention measures

There is much public policy which indirectly affects job retention strategies for disabled workers. This commentary focuses on workplace health and safety legislation, employment law, law which regulates access to medical records, and state regulation with regard to occupational and statutory pensions.

Health and safety legislation

The focus of the many statutes in this area is on preventative risk management, employer education and the safe regulation of work activities. There is a negligible focus by the Health and Safety Executive (HSE) on the outcomes of work accidents, illness and disease: the aftermath is handed over to the Department of Social Security.³⁹

The activities of the HSE revolve around the mass of legislation regulating work routines. Legislation requires explicit instructions and rules and thus focuses on physical activities and environments, and on visible injuries and diseases. The HSE finds it extremely difficult to apply this framework to disability at work which is not visible and/or does not pertain to physical activities or the physical work environment. Therefore the HSE's ability or commitment is extremely limited in preventing more qualitative health risks such as work intensification, work stress, back pain and diffused RSI. There is some concern now, however, from legal advisors that links between job activities and 'mental injuries' can lead to prosecutions under s.2(2)(a) of the 1974 Health and Safety Act under the requirements to provide a 'safe system' of work for the employee.⁴⁰ The outcome of this argument is that the HSE is well equipped to deal with the health and safety concerns of the traditional manufacturing, utility, and agricultural industries but is less able to deal with health issues in the dominant services sector in which nearly 80 per cent of British workers are now employed.

The *Health & Safety (Consultation with Employees) Act 1996* was introduced in reaction to a European Court of Human Justice decision. The HSE argues that this legislation will lead to a further 33 per cent drop in accident rates.

The HSE provided a *Guidance Note on Job Placement and Rehabilitation* for employers on the health aspects of job placement and rehabilitation⁴¹; it is currently under review following the introduction of the DDA. The guidance differentiates between a disabled worker and a worker suffering ill-health; it also draws employers' attention to the Health and Safety at Work Act 1974, which aims to protect the health and safety of employees and others who may be affected by the enterprise. Employers are obliged to be aware of the health status of their employees so that the employee, other employees, or customers are not put at risk.

The impact of the guidance can be interpreted in two ways in relation to job retention. First, employers need to ensure that the worker is sufficiently fit or dexterous to carry out the job required and that no person should be

put at risk by unfit or ill workers. Therefore, employers should not retain workers if their condition is aggravated by work, or if it affects other workers or customers. On the other hand, the guidance encourages employers to adapt work where possible, adopt early return to work strategies and work proactively to sustain a healthy workforce.

Statutes can be relied upon in dismissing disabled employees on the grounds that continued work would aggravate the injury or illness.

Employment law

Whistleblowing: Continuing a process of 18 years of amendments, the *Employment Rights Act 1996* has added new features to Health and Safety law; for example, it now protects workers who 'blow the whistle' on health and safety issues at the workplace, or those who carry out legitimate health and safety activities or take certain action in circumstances of danger. Taking actions to protect one's own health may legitimise disabled workers taking more frequent breaks or adapting their work routines so as to work more comfortably or safely.

Statutory Sick Pay (SSP): The *Employment Rights Act* Section 1(4) (d) (ii) requires that employers provide employees with a statutory statement which includes their rights when ill or injured and the provision of sick pay. All employees have the right to statutory sick pay for the first 28 weeks of absence but do not have automatic rights to occupational sick pay. SSP is not straightforward and requires agreement on a number of issues between employee and employer. The employee must fulfil the conditions concerning the calculation of the period of incapacity for work, a period of entitlement and qualifying days.

Dismissal law: This refers to unfair dismissal, wrongful dismissal and constructive dismissal. Unfair dismissal will be heard in an industrial tribunal, whereas claims for wrongful and constructive dismissal will be directed to county courts. Disabled workers should be aware of these remedies relevant to them, although they are very reactive strategies in that dismissal claims are lodged after employment has ceased. Even when reinstatement is provided as a remedy, it is likely that a constructive employee-employer relationship will have been significantly damaged during the course of court or tribunal proceedings. On this latter point it should be noted that the tribunal will seek conciliation, whereas the courts will provide compensation.

Constructive dismissal: It is conceivable that many disabled workers leave their employment voluntarily because of the combination of disability and a hostile work environment. If the employer has acted in a way which breaches the contract of service then, even though the employer has not terminated the contract, constructive dismissal may be claimed. Thus, disabled workers who are not given support, are given menial or abnormal work, or, in cases where it becomes clear that the employer wants the disabled workers to retire or otherwise leave the enterprise, may feel that, although it was the worker's decision to resign, the employer made work life onerous to the extent that they were constructively dismissed.

Workers in the UK are under increasing surveillance at work as technology and managerial prerogative are directed towards the control of drug taking and malingering at work. The same surveillance can be directed at disabled workers. For example, an employee of a UK-based bank claimed in an industrial tribunal that she was victimised by her managers after taking seven weeks sick leave for work-related stress; all her lavatory visits and other absences from her desk were monitored and documented.⁴²

Access to health records

Disabled workers may feel vulnerable when their illness or disability is documented and records are held in the employer's data system. They may be uncomfortable sharing their confidential medical or psychological reports with their employer, even though such information can be useful in evaluating the merits of a job retention programme or alleviating the employer's concern about the future productivity of the worker. Equally, employers may be hesitant to introduce a job retention strategy without a very good knowledge of the disabled worker's health situation.

The Social Security Department's Guidance on Statutory Sick Pay allows the employer to challenge the statement of doctors and ask for other medical information on the condition of a worker who is absent on sick leave.⁴³ The protection under the *Access to Health Records Act 1990* may not be fully relied upon in this case. The exact meaning of 'confidentiality' of a worker's health is unclear, especially when medical records during employment are kept by the employer or their representative. Occupational health professionals are concerned that the *Access to Medical Records Act* does not cover internal communications between enterprise-based medical staff and management.⁴⁴

Labour market policy

Policies in place before 1 May 1997 demonstrated a continued commitment to a 'flexible' labour market free from restrictive working practices, regulation and wage determination. Removing burdens on businesses was a prime concern of the former Conservative government. A series of reforms led to almost the total deregulation of minimum wages and a reduction of the role of collective bargaining in wage determination. With the deregulation of wage agreements, there has been a shift towards company or plant-level agreements, with more pay determination based on individual performance. A trend in the UK that is not evident elsewhere in Europe is an increase in low-pay jobs and wide disparities in incomes.

The promotion of individual responsibility and incentives to work were central themes of successive Conservative governments from 1979, alongside reducing the costs of the welfare state. A stated priority for action was 'an improved benefits system, which offers both strong encouragement to unemployed people to make efforts to find work and improved incentives to work'.⁴⁵ Programmes for the unemployed, including long-term disabled people, focused on reducing the value of benefits, restricting eligibility, tightening their administration and introducing new programmes to assist access to work. Links between benefit payment and active job search were strengthened.

The low wages available in 'entry-level' jobs taken by unemployed people mean that some individuals can be little or no better off in work than out of work and claiming benefits. In-work earnings supplements seek to avoid this 'unemployment trap' for families with dependent children. They were first introduced in 1971. A similar in-work benefit was introduced for disabled people in 1992. The policy is based on the assumption that increased income is the main incentive to work. In 1996 and 1997 pilot programmes were introduced for groups for whom the 'unemployment trap' is a less significant difficulty.

Financial incentives to employers and subsidised community work play a central part in the Labour Government's New Deal plans, notably for young unemployed people. Whether wage subsidies and recruitment incentives will play a part in the 'Welfare to Work' proposals for disabled people is not yet known.

I.8.2 Changes in labour market demand and the structure of the labour market

The overall labour market participation rate (76 per cent in 1996) is well above the EU average and varied only slightly over the previous ten years; the activity rate for women has remained constant at around 67 per cent since 1990.⁴⁶ Unemployment in the UK is now at a seven year low and this trend seems set to continue. This means that companies will soon start to experience significant skill shortages, similar to those experienced in the early eighties. (It was during this time that companies first began to develop positive policies towards attracting a diverse workforce, in order to address the skill shortage.)

The UK labour market is considered distinctive because of the growth of 'atypical' forms of employment. Part-time work grew most rapidly in the 1960s, however, and in the last ten years growth has been slower. In 1996, 25 per cent of workers were employed part-time, with 45 per cent of women employees in part-time jobs; in the EU member states only the Netherlands has a much higher rate of part-time working and the rate in Sweden is on a par with the UK.⁴⁷ The distribution of hours worked is very wide. One in ten employees work fewer than ten hours in their main job. Part-time work is less well paid: on average, part-time employees earn two-thirds of the hourly earnings of full-time employees. Equal employment protection was extended to part-time workers in 1995, following a ruling that part-time women workers were unfairly discriminated against. However, there is a two year qualifying period for access to employment protection rights.

Self-employment rose sharply in the 1980s but in the 1990s the share of self-employment has remained static at around 13 per cent (17 per cent of male employment). The share of temporary work, although growing, is relatively low. New forms of flexible working include nil-hours contracts, flexi-time (12 per cent of employees work flexi-time) and home-based working, including tele-working.

Implications for disabled people

A research-based commentary on the implications of the changing labour market for disabled people⁴⁸ notes that part-time working may offer greater employment opportunities for those disabled people who do not feel able to carry out a full-time job because of a lack of stamina or fluctuating conditions, or who need to devote more time to everyday living tasks. Flexible working hours and self-managed employment patterns are potentially of benefit for the retention of disabled workers; for example, for people with progressive arthritis who find it difficult to get going in the morning, to start their working day later, or for people on dialysis who are required to go to a hospital on two days a week, who could work longer on the remaining days to compensate for their absence. However, the acceptability of such adjustments under the DDA remains untested.

Disabled people in self-employment constitute 14 per cent of the disabled workforce, but older people are over-represented. Home-based self-employment may have particular attractions: as many as 19 per cent of self-employed disabled people say they have to work at home because of their condition.⁴⁹ While self-employment can be welcomed for offering flexible working patterns and the ability to work around disability or illness⁵⁰, other research found that disabled self-employed people work longer hours than non-disabled people, although a much higher proportion of disabled people reported they could not work full hours.⁵¹

Tele-working or home-working may also present better opportunities for disabled people in employment, but the resulting social isolation may mean that it is a limited option for others.

Factors that have an adverse affect on job retention for disabled people include downsizing, de-layering, outsourcing, reduction in union powers through the erosion of employee rights, early retirement and redundancy policy, and the growth in atypical working.

I.9 Other aspects of employment policy and practice which have an impact on job retention

Self-determination

One significant factor that should be considered with respect to the retention of disabled employees, is the impact of the onset of disability on the individual. People who suddenly become disabled or who develop a progressive impairment will view themselves in a different way from before the onset of that disability. It is likely that they will devalue themselves, just as they are devalued by other people in society. This may result in a negative self-image, leading them to take less responsibility for their own retention, training and career development. If they are offered opportunities for ill-health retirement on the back of a Permanent Health Insurance Policy, then they may be more susceptible to this approach than they might be if they felt more positively about themselves. In order to resolve this very difficult issue, employers need to invest in personal development programmes for newly disabled people or disabled people who are being considered for early retirement or redundancy. This form of training will help disabled people to become more positive about themselves. Research on this approach is currently being carried out by one of the world's largest Permanent Health Insurance companies. The findings from this research are likely to become available early in 1998. Further information on it is currently commercially confidential.

Occupational stress

The spectre of 'work stress' and its potential for generating huge compensation claims from disgruntled, ill or distressed employees has gained prominence in recent times, with estimates that occupational stress is costing £100 million a year to British employers.⁵² Of key interest to job retention and return to work measures is the fact that workplace demands, work design and early intervention can have considerable impacts on stress levels and therefore proactive disability management is appropriate. There is some uncertainty about the term 'occupational stress' and it is conceptualised in a number of ways. The HSE have tried in vain to dismiss it as a real Health & Safety issue and to refer instead to 'stress-related ill-health'. Now, at last, the HSE is sponsoring a three-year study⁵³ into occupational stress involving 17,000 people. The objectives are to reach an accurate working definition of the term 'occupational stress'; look at the causes of stress at work; determine the extent of occupational stress and its severity; and assess the effects of stress on people's health.

ENDNOTES

- ¹ Doyle, 1994, p.12.
- ² Cabinet Office (1994).
- ³ BT (1993).
- ⁴ City University (1997) *Promoting and Providing Consultation Services on the Disability Discrimination Act 1995*, Participant Manual, Program on Employment and Disability, London: Rehabilitation Resource Centre, City University, p.65.
- ⁵ Department for Education and Employment, 1996b.
- ⁶ Equal Opportunities Review, 1997a.
- ⁷ Employers' Forum on Disability, 1997.
- ⁸ Dench *et al.*, 1996.
- ⁹ Cabinet Office, 1994.
- ¹⁰ EFD, 1996.
- ¹¹ EFD, 1992.
- ¹² Interview with the Executive Director of EFD, Susan Scott-Parker 24/09/97.
- ¹³ Holland, 1995.
- ¹⁴ Paschkes-Bell *et al.*, 1996.
- ¹⁵ Paschkes-Bell *et al.*, 1996.
- ¹⁶ Employment Service, 1984.
- ¹⁷ Morrell, 1990.
- ¹⁸ Padison v. IMI Cornelius (UK) Ltd 1992, cited in RADAR, 1992.
- ¹⁹ Communication from the Secretariat of the National Advisory Council on the Employment of People with Disabilities dated 25th October 1996.
- ²⁰ Social Analysis and Research Division, Department for Education and Employment, unpublished research.
- ²¹ Rolfe *et al.*, 1996, p.34.
- ²² Outlined in guidelines issued to PACTs, according to RNIB/RADAR, 1995.
- ²³ Beinart *et al.*, 1996.
- ²⁴ *Hansard*, col.80, 11/11/1996.
- ²⁵ RNIB/RADAR, 1995.
- ²⁶ CRG Research Consultancy Training, 1996.
- ²⁷ *Ibid.*
- ²⁸ Cited in Finn, 1992.

²⁹ TUC, 1997.

³⁰ Floyd, 1995.

³¹ Doyle, 1997.

³² Department for Education and Employment (1997) *Exemption of Small Employers from DDA to be Reviewed*, Press Release, 3 December, 409/97.

³³ Cited in Thornton and Lunt, 1997, p.259.

³⁴ Doyle, 1997.

³⁵ Department for Education and Employment, 1996b.

³⁶ RADAR Bulletin, 1997.

³⁷ TUC, 1996.

³⁸ Equal Opportunities Review, 1997.

³⁹ Much of the commentary from this section is from an interview at HSE headquarters with Howard Saunders, 22/10/97.

⁴⁰ Croner, 1997.

⁴¹ HSE (1989).

⁴² Henderson (1997).

⁴³ DSS leaflet number NI227.

⁴⁴ Pickvance, 1996.

⁴⁵ European Commission, 1996.

⁴⁶ European Commission, 1997.

⁴⁷ Ibid.

⁴⁸ See Lunt and Thornton, forthcoming 1998.

⁴⁹ Floyd, 1995.

⁵⁰ Thomas, 1992.

⁵¹ Prescott-Clarke, 1990.

⁵² Croner Office Briefing, 1997b.

⁵³ Croner, 1997a.

II. BENEFIT AND COMPENSATION PROGRAMMES

The purpose of this Part of the report is to examine how social benefit and compensation programmes affect possibilities for disabled workers to retain or rapidly resume their employment. The main focus is on the application of benefit programmes in employment; that is, opportunities to combine earnings with income from disability benefits, workers' compensation or other employment-related reparations. The obstacles presented by systems for out-of-work benefits are also examined. The theme covers cash benefits and payouts and, where significant, allowances against taxable income. Programmes may be funded from tax revenues, or from earmarked or general insurance funds to which employers and/or employees contribute.

The first section presents information about workers' and other compensation programmes. This is followed by a discussion of arrangements for combining benefits and earnings from work. Provision is then considered for income support out of work, and its effects on work resumption. The final section examines interactions between disability benefit programmes and employment policies.

Aspects of the disability benefits programme are under review and changes are expected to be announced in the Spring of 1998.

II.1 COMPENSATION PROGRAMMES FOR WORK-RELATED INJURY OR ILLNESS

II.1.1 Principal compensation programmes for work-related injury or illness

The only state compensation programme specifically for work-related injury or disease is Industrial Injuries Disablement Benefit. It provides financial compensation only. Employers' liability insurance is compulsory and employees who suffer a work-related injury or disease may take civil action against the employer. Both schemes have been restricted over the past 15 years. Neither of these schemes imposes any requirements on employers such as to provide rehabilitation for the injured employee.

Social security benefits, notably Incapacity Benefit, provide income compensation regardless of cause of incapacity for people deemed incapable of work. Reforms introduced in 1995 aimed to reduce escalating growth in the number of recipients of Incapacity Benefit.

Attention is focusing on the potential of private insurance taken out by employees themselves, although such schemes benefit only those with the financial capacity to contribute to them. Benefits packages provided to employees by employers are also significant in inhibiting job retention in the event of illness or disability occurring in the course of employment.

We first describe programmes specific to work-related injury and illness, move on to look at relevant state income maintenance schemes for being who are sick or disabled, and conclude by describing private schemes.

Industrial Injuries Disablement Benefit (IIDB)

Industrial Injuries Disablement Benefit is a tax-free benefit payable to people who are disabled because of an

accident at work or because they have a disease caused by their work. A person does not need to have paid National Insurance contributions to be able to get Industrial Disablement Benefit. Self-employed people are not included in the scheme.

Industrial Disablement Benefit for an Accident or Injury

There are two main conditions which have to be satisfied: the person must be employed by someone else and be paid wages or salary; and the injury must be the result of an accident at work which happened after July 1948 (and the accident happened in the UK or in a country with a reciprocal agreement covering industrial injuries, or anywhere abroad if Class 1 or 'special' Class 2 national insurance contributions are payable).

There must be some loss of physical or mental faculty as a result of the accident. The degree of loss of faculty will be assessed by a Medical Board. Benefit is not payable until 15 weeks after the date of the accident causing the disability.

Industrial Disablement Benefit - Prescribed Diseases

If someone has an industrial disease, or a condition resulting from one, and it has occurred because of work after July 1948, they may be able to get help under the industrial injuries scheme.

There are three main rules:

- the disease must have been incurred in the type of work listed for the particular disease
- the worker must have one of the diseases listed
- the disease must be because of work in a job listed for the disease.

Payments

Benefit will be paid, as a weekly pension, if the degree of disability is assessed at 14 per cent or more. Assessments between 14 per cent and 19 per cent will be paid at the rate for 20 per cent. If less than 14 per cent disabled the worker cannot normally get Disablement Benefit unless the disease is pneumoconiosis, byssinosis, or diffuse mesothelioma. There are different rules if the job has made the worker deaf.

Table II.1: Percentages and amounts, 1997-1998

<i>Disability</i>	<i>Payment</i>	<i>Disability</i>	<i>Payment</i>
100%	£101.11	50%	£50.55
90%	£90.99	40%	£40.44
80%	£80.88	30%	£30.33
70%	£70.77	20%	£20.22
60%	£60.66		

Source: Disability Alliance ERA (1997) *Disability Rights Handbook*, 22nd Edition, April 1997-April 1998, London: Disability Alliance ERA.

Total payments for disease and injury compensation are around £600 million per year. About 2,500 successful disablement benefit claims are made for the first time each year. Spending on the scheme is controlled. The value of the benefits has been progressively reduced since its introduction in its present form after World War II (the original Workers Compensation Act which introduced 'no-fault' compensation dates back to 1897). The range of available benefits has been reduced over the past 15 years, most significantly by the removal of reduced earnings allowance which is now available only to those with health problems predating 1990. In real terms, spending on the scheme has declined as a proportion of the social security budget.

Employer liability civil compensation scheme

If an employee becomes disabled because of a work-related injury or disease then the individual may be able to obtain compensation by taking the employer to court as result of their failure to take due care within their responsibilities under the Health and Safety at Work Act. Levels of compensation will be determined by the court and are subject to the impact of the disability on the individual and the effect that it will have on their future earning capacity. The amount of compensation awarded each year is similar to that in the IIDB scheme but the number of new claims is very much higher, standing at 70,000 new claims in 1995. Over 90 per cent of claims are settled out of court (that is, negotiated by solicitors for the two sides).⁵⁴ Compensation payments can sometimes be very substantial indeed.

Statutory Sick Pay

Any employee who becomes ill or disabled whilst in employment is entitled to Statutory Sick Pay (SSP). The maximum amount of SSP that an employee can receive is 28 weeks pay (at a rate of £54.55 a week in 1996/97) in any sickness period, whether that period is continuous or linked. Many employing organisations have a policy to pay more than Statutory Sick Pay. This can vary from just a few days for new recruits to a full year for established employees. In some organisations employees can be paid at full salary level for up to six months with any further payments at a lower level.

If overall limits are reached and an employee needs to take further time off, employers have a range of options: transferring the payment of sick pay to the permanent health insurance scheme, if applicable; paying extended sick pay on a discretionary basis; allowing the employee to take unpaid leave, or allowing the employee to use accrued annual leave entitlement.

State income maintenance benefits for disabled people

Employees who become disabled during their time in employment, and who no longer have an employment relationship, have access to a range of state-funded benefits.

Incapacity Benefit

In 1971, a contributory benefit to replace lost earnings arising from total incapacity for work was added to the range of national insurance benefits established in 1944, as a response to a growth in long-term sickness claims. In 1995, this Invalidity Benefit was amalgamated with Sickness Benefit to become Incapacity Benefit (IB). It is paid to insured people who are deemed unable to work following a medical assessment. The benefit is not means-tested but is taxable. It is paid at two short-term rates in the first year and thereafter at a higher long-term rate. An age addition is paid for those whose incapacity began before the age of 45, depending on the age when it began. There are around 1.56 million recipients under pension age (at May 1997).

Severe Disablement Allowance

In 1984 a severe disablement allowance (SDA), funded from tax revenues, was introduced for severely disabled people of working age who have never worked or who have insufficient national insurance contributions. SDA replaced two separate benefits. The amount of this allowance is lower than the insurance-based benefit but is tax-free. Anyone who became disabled for work under the age of 20 qualifies. Others must prove that they have been 80 per cent disabled for at least 28 weeks. At May 1997, there were 367,000 recipients. Around 80 per cent of SDA recipients are of working age (there is no upper age-limit for receiving the allowance once it has been awarded). More women than men of working age receive SDA. Rather less than half have learning difficulties.

Income Support

Disabled people who are ineligible for the insurance benefit (IB) or for SDA may apply for Income Support (IS). This is a means-tested general social assistance benefit available for those not working 16 hours or more a week and is designed to bring income up to a minimum level. IS may be the only income source or a top-up to other benefits. IS premiums are paid to groups not required to be available for work: pensioners, lone parents and disabled people under the age of 60. The disability premium is awarded if certain other 'qualifying' disability benefits are being received. In 1995 around one in eight (739,000) recipients were disabled; of those, 231,000 also received SDA.

Jobseekers' Allowance

Disabled people not receiving IB, SDA or IS who are unemployed for more than six months may receive the income-based Jobseekers' Allowance. There is no test of disability for this benefit and numbers of disabled recipients are not available.

Other state benefits

There are also benefits which are not dependent on an employment history; they are underpinned by the assumption that having a disability can involve extra costs:

- Disability Living Allowance is a tax-free benefit for people who need help with personal care or with getting around, or both. It is made up of two components, a care component and a mobility component. Both components are for people who have become disabled before the age of 65.
- Value Added Tax relief is available on goods purchased by disabled people which are bought for a reason which specifically relates to their disability.
- A range of other state-funded compensation programmes that may support disabled people include the Independent Living Fund, Housing Benefit, Council Tax Relief and Housing Grants.
- Additional financial help for people who are registered as blind. These benefits include special Income Tax Allowance, Television Licence at reduced cost, travel concessions and a higher weekly payment of Income Support.

Individuals who become disabled due to war-time injuries are entitled to claim a War Disablement Pension.

Private schemes

Employers can also offer medical insurance, pension schemes and life insurance policies to disabled people. Early retirement on health grounds may result in the employer withholding payments for medical insurance and life assurance; however the individual may receive a contribution from the pension scheme.

As there are no statutory obligations for employers to provide these benefits, they are delivered in a variety of ways according to employers' and employees' needs. For example, Hospital Cash Plans are a cheap form of occupational health protection and such schemes will cover a period of 'recuperation' for policy holders.

Permanent health insurance

Many employers provide benefits packages to attract and recruit highly qualified and well motivated members of staff. One of these measures is Permanent Health Insurance (PHI), sometimes referred to as long-term disability insurance. This is a scheme whereby the employer takes out a private insurance scheme to safeguard the future financial requirements of employees who become disabled and are no longer able to work. The benefit to the individual would be approximately 50% of their salary for a period of 10 years after they are retired on ill-health grounds, although this is quite variable. PHI packages often include both long-term occupational sick pay and critical health cover. While these packages can be valued by disabled workers, access to workplaces which have such coverage is often limited. These schemes tend to be marketed to professional, full-time employees and those in the public sector, and existing health conditions can exclude a person from membership, or at least limit their benefits. PHI policies are also bought by the individual as well as by the employer as part of a group scheme.

Occupational health schemes

Such schemes offer packages of differing value to disabled workers. Decisions to remain in employment or take the 'golden parachute' to retirement depend on each scheme's qualifying conditions, definitions of incapacity and benefit levels. Occupational sick pay schemes vary in their rules for eligibility, coverage, exclusion for sporting injuries, entitlement, waiting days, notification, and long-term sickness.⁵⁵

Private health insurance

A survey carried out in 1994⁵⁶ showed that over 3 million people subscribed to private health schemes, over half of them with group schemes; 36 per cent of households with an annual gross income of £26,000 had private health insurance but only three per cent of households with annual gross income of less than £8,000 cover. The older contributors are protected with specific tax relief for people aged 60 or older so that cover can be maintained despite reductions in income.

A series of questions included in the 1995 General Household Survey (GHS) looked at private health insurance in the UK and findings supported the perceived selectivity of such schemes (which are similar in coverage to the occupational pensions cited above). Since 1987 there has been only a slight increase in the number of people with private medical insurance (PMI) (from five per cent to six per cent). The most common type of private medical insurance is the company scheme for which the employer pays the whole contribution (40 per cent). Noticeably, coverage was predominately provided to professionals (40 per cent) and employer or manager groups (44 per cent). Men were twice as likely to be policy holders as women (nine per cent to four per cent) and people who reported a long-standing illness were less likely to have PMI cover (five per cent) than those who reported a non-limiting or no long-standing illness (11 per cent).⁵⁷

Effects on disabled workers

It is the more severely disabled employees and self-employed people who are the most vulnerable under the new approach to both pension provision and individual health coverage. A 1995 study⁵⁸ found that disabled people are less likely to be covered by occupational pension schemes and disabled workers are even more likely to be vulnerable if they have had a disrupted work history, are female, and/or perform manual work. See the table below.

Table II.2: Characteristics of likely membership of an occupational pension scheme

<i>Characteristic</i>	<i>Most likely to be members of an occupational pension scheme</i>	<i>Least likely to be members of an occupational pension scheme</i>
Pay	well-paid job	poorly paid, earning under £5,000 per annum with poor savings
Gender	male	female
Job	white collar, public sector or large private sector, full-time	manual, cleaners, workers in cafes, restaurants and public houses; casual; smaller firms
Age	middle-aged	young
Disability	non-disabled	disabled

Source: compiled from Howard and Thompson, 1995:26.

Occupational pension schemes and occupational health insurance differ in their impact on workers between jobs. It is important for workers to accrue benefits to the former schemes over time, while in occupational health schemes the rights to full benefits are available once the qualifying period is over.⁵⁹ Employees with poor occupational pension coverage would be encouraged to seek occupational health coverage for their disability rather than rely ultimately on an occupational pension fund.

II.1.2 Features of the compensation process which affect job retention and return to work

Assessing eligibility for incapacity benefits

A new approach to assessing eligibility was a central element of reforms to disability benefits in the first half of the 1990s. The introduction of self-assessment marked a departure from medical examination towards recognition of the practical effects of disability. Self-reporting procedures may be involved in applying for any of the disability benefits (except for Industrial Injuries Disablement Benefit for which the extent of disability is assessed in percentage terms, based on a medical assessment).

Eligibility tests for income replacement disability benefits are now based initially on self-assessment of functional capacity. The 'own occupation' test applies for the first 28 weeks of a claim of incapacity to work and assesses the person's ability to do their usual work, supported by a medical certificate issued by their own doctor. After

28 weeks, those who continue to claim are subject to the 'all work' test (those with no usual occupation are subject to the all work test immediately). Claimants complete a questionnaire and statements are supplied by medical practitioners and specialists. Claimants may be asked to undergo a medical examination if required by the decision-makers (the Benefits Agency Medical Service). The all work test contains no reference to labour market conditions.

The all work test assesses capacity to do any work determined by 'functional ability' to carry out activities such as walking, rising from sitting, carrying, seeing, continence and so on. Limits on ability are scored; a total of 15 points qualifies. The mental health assessment covers ability to complete tasks, cope with daily living, deal with other people and cope with pressure. The test does not take account of the claimant's possible work situation and of adaptations which could be made to accommodate functional limitations.

Although most claimants have found the self-assessment test easy to complete, concern has been expressed about the difficulty of capturing fluctuating conditions, as the yes/no nature of the questions does not allow for contextualised answers.⁶⁰ Research indicates that the new rules exclude from incapacity benefit some disabled people with partial capacity for work, notably those who are unable to work a full day or week because of disability, those who need extra rests during a full working day and those likely to need substantial amounts of time off work for treatment and sick leave.⁶¹

A proposed innovation from the Health and Safety Executive (HSE) is a distance learning package, accredited by the medical profession, which seeks to educate doctors who frequently are called on to give sickness certificates.⁶² The package encourages GPs to consider the type of work, work adaptations, work flexibility in relation to the daily work activities of the patient before certifying them as unfit for work. There are obvious concerns about confidentiality but a positive relationship between doctor, disabled worker, and employer may result from training packages which improve a GP's understanding of the work environment, strategies and adaptations available, and the long-term consequences of sickness absence versus job retention programmes.

IIDB and civil damages

There are major differences in coverage between IIDB and the civil damages provision under employers liability insurance. The former covers 67 prescribed diseases, almost identical to the list in the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR). Even this, however, only covers a small proportion of diseases on the European Recommended List. As Pickvance (1997) points out:

Yet only a third of the diseases on the European Recommended List are covered in full in the UK list. Half the diseases on the prescribed industrial diseases list generate, on average, only one successful claim each year. Ninety per cent of successful claims are for just ten of the diseases, and some of the most common work-related health problems identified from the Labour Force Survey, in particular musculoskeletal conditions, are not included in the list at all.⁶³

Civil damages awarded from employers' liability insurance cover any disease which can be related to a worker's occupation, provided that liability and negligence can be demonstrated. A proportion of claims for relatively common conditions are settled on the basis of no-fault schemes agreed between insurers and some major personal injury solicitors, notably for occupational deafness but recently extended to cover hard-arm vibration syndrome and repetitive strain injuries.

Prevention

Neither system has much effect on prevention. As noted, the prescribed diseases in the state system are closely linked to RIDDOR's and reports through RIDDOR should prompt investigation by the HSE. However, they bear little resemblance to the true picture of occupational injury and disease. In sum:

Prevention is hindered rather than enhanced by linkage to a system which is artificially limited by cash constraints on state compensation and the strict criteria laid down for prescription. ... [The] system of state regulation ... compensates a tiny number of people for a few long-recognised diseases and has no detectable effect on national prevention policy'.⁶⁴

Employers' liability insurance does not translate into pressure to improve conditions in the workplace. Employers' typical response to serious injury is thought to be no more than the replacement of guards on machinery. Workplace visits by insurers' assessors when the level of insurance is under review do not appear to be effective in changing practices to encourage prevention. There is some anecdotal evidence that advice by insurance assessors works against the retention of already disabled people who can be considered to be a liability in some work situations.

Job retention/return to work

Neither system is designed to foster job retention or return to work. In the state compensation system (paid through national insurance premiums) there is no opportunity for rebates or discounts to employers based on past claims or for insurance premiums tied to requirements which improve the future level of claims.

The liable employer is not required to pay the costs of rehabilitation for the injured employee and costs, whether borne by the employer or the state, are not covered by liability insurance. (In the opinion of the informants, the Government's instructions that the National Health Service claim back from insurers the costs of motor vehicle accidents presage changes.)

Changes to legal aid

Access to the civil damages system has been restricted by changes in the legal aid system; only those with disposable incomes equivalent to the Income Support level now have access to free legal aid. Planned changes to take effect from April 1998 mean that free legal aid will no longer be made available to poorer workers who are seeking monetary damages through civil action.⁶⁵ It is expected that the move to no-win, no-fee agreements with lawyers will allow many middle and upper income groups to seek agreements with lawyers to handle their cases. It is expected that lawyers will 'cherry-pick' the simpler and easier cases, and avoid the more complex cases. The consequence for disabled workers is that there is an opportunity available to pursue civil compensation, and lawyers may attract disabled workers to this path at the expense of conciliatory job retention strategies. Noticeably, successful personal injury claims have risen threefold over the last decade. The winners will be the more articulate disabled workers with straightforward cases and the losers will be those disabled workers who in the past would have received free legal aid, and/or disabled workers with more complex cases such as stress, RSI, and other illness with a perceived work-relatedness factor where the risk of losing a case may be difficult to estimate. The poorer workers would also not be able to pay the insurance fee (to cover the costs if the case fails) and the initial medical reports needed to launch an action.

On the other hand, one might speculate that the prospects of increases in civil litigation cases and larger compensation levels may prompt employers to take proactive measures to manage issues that in the past were handed on to workers' compensation and other insurers.

II.1.3 Influences of key actors involved in the process

Trades Union representatives are the largest source of information about IIDB and the main source of advice. Trades Unions play a major role in successful claims under the civil damages scheme. Trades Union membership gives access to low-cost legal representation. In 1994, almost two-thirds of injury and disease compensation was won for trades union members; at that time a little over one-third of the workforce was in a trades union.⁶⁶

Trades unions, some *disabled people's organisations* and *employers' organisations*, like the Employers' Forum on Disability and local employer networks, are now seeking to influence the current compensation process which does not favour action to promote retention. They are in favour of promoting an approach which understands the business benefits of retaining people who become disabled. In addition, disabled people's organisations are seeking to promote a much more positive image of disability and an awareness of the value and potential of disabled people in employment. Unions are also in a key position to promote the value of disabled people in employment; however, this does contradict their role as advocates for employees who become disabled with a work-related injury who are undergoing the process of taking a compensation claim to court.

The net effect on disabled individuals seems to be that they are more likely to consider returning to work if their employer has created a culture which values diversity and values disabled people in particular. They are more likely to decide to return to work if there are a substantial number of other disabled people working within that organisation who will act as positive role models by demonstrating that disabled people are welcome.

Insurers in the UK will cover the employer's liability insurance associated with injuries/diseases and set premiums based on: claims experience of the enterprise over a set period; industry/occupation type; a measure of the time over which employees are exposed to risk.

In the UK, these insurers are passive toward job retention and tend to focus on selling products to large employers in terms of liability, private health insurance and sickness insurance without becoming interested in developing partnerships with employers or offering flexible packages.⁶⁷

II.1.4 The effects of compensation on job retention, return to work and exit from employment

IIDB

Data on IIDB claimants is available from a 1995 DSS-commissioned stratified survey⁶⁸ of recent successful and unsuccessful claimants on the basis of accident at work and prescribed disease. In the latter category, compensation was not an important factor in determining exit from employment as claimants were, on average, aged over 60 and a large proportion were retired at the time of the claim. There is little evidence to suggest that the award levels *per se* encouraged claimants to leave employment. IIDB may be combined with Invalidity Benefit, however, and around half of successful accident claimants obtained both. Combined incomes are very

low, however, and although over half of successful accident claimants receiving benefits in addition to IIDB never returned to work they mostly regarded themselves as permanently disabled.

According to the survey, nearly half of successful accident claimants never returned to their place of work, compared with under a quarter of unsuccessful accident claimants. Among those accident victims working for a different employer, the majority had left their previous employment because their disability meant they could no longer do the job or because working conditions were unsuitable. Twelve to 13 per cent of accident claimants wanted work but had not found suitable employment.

Civil compensation scheme

It is likely that, the greater the illness or injury that can be demonstrated by the employee's lawyer, the larger the compensation claim will be. Any return to work will jeopardise a compensation claim. There is little doubt that this scheme generates the potential for preventing newly disabled people from returning to work.

In the case of occupational stress, the present unwillingness to tackle such stress pro-actively pushes many disabled workers into pursuing civil cases for compensation after the stress has forced their resignation rather than ask for support for job retention measures while still in employment. A number of legal precedents have encouraged the civil law approach.⁶⁹

The self-image of the disabled person is a factor. If they feel very negative about their new experience of being a disabled person then they may be less likely to remain in employment and more likely to adopt the compensation route.

Social security benefits

The UK has an 'all or nothing' system of income maintenance for disabled people judged incapable of work. The prospects of return to work once the employment relationship is broken are limited by disincentives in the benefits system. The bewildering array of state benefits available to disabled people can create a great deal of confusion amongst disabled people. A lack of knowledge of the options, and a reluctance to risk leaving out-of-work benefit combinations, appear to interfere with return to work.

Retirement on grounds of ill health

A great deal will depend on the individual. If they have become highly demotivated as a result of the onset of their impairment then they are more likely to take the unemployment route rather than decide on a pathway which helps them return to work. The employer can be very influential in this area. An employer who is relatively resistant towards retaining disabled people may inform the newly disabled employee of the benefits of retirement on the grounds of ill health in a way that encourages them to take this option. If, however, the employer has a very positive policy towards retention of disabled people then they are more likely to advise the newly disabled employee of the benefits of remaining in work.

II.1.5 Characteristics of disabled workers who do or do not retain their employment or return to work following successful or unsuccessful claims

Published statistics on Industrial Injuries Disablement Benefit do not show the numbers of recipients in work. The stratified sample survey of successful and unsuccessful claimants that was referred to above⁷⁰ found that one third of successful and over a half of unsuccessful accident claimants were in paid employment or about to start a job they had already found, around two thirds working for the same employer. Only one in ten of those who suffered from a prescribed disease were in work; according to the survey, a high proportion of claims for prescribed diseases are made retrospectively post-retirement, well over half being three or more years after onset - attributable in part to changes in the law recognising chronic bronchitis.

The nature of IIDB means that a large proportion of claims are confined to certain industries. Managerial, professional and sales occupations account for very few claims.

II.1.6 Effects on job retention and return to work resulting from the interaction between compensation programmes and out-of-work benefit programmes

Incapacity Benefit is not means-tested and may be claimed in addition to other income sources such as occupational pension. An estimated 40 per cent of IB recipients (55 per cent of those aged 55 and over) receive occupational pensions.⁷¹

Because of the means-tested rules in other benefits and offsets for receipt of benefits, many unemployed workers with compensation payouts and IIDB find themselves stuck in a low level of combined benefits.⁷² A particular problem is 'clawback' by the DSS Compensation Recovery Unit of damages awarded to litigants for civil compensation, sometimes leaving the claimant with little or nothing to show for a protracted legal battle.⁷³ A survey of Invalidity Benefit (IVB) claimants about a year after receiving IVB for the first time found that 15 per cent had made a claim for compensation for their IVB condition.⁷⁴

The Government has announced a strategic view into benefits and taxation systems which is currently being conducted. This general review will affect all benefit and taxation systems, not just those relating to newly disabled people. However, the Government and its advisers are consulting widely with disability organisations to develop a new and sustainable approach.

Retirement pension schemes

State early retirement strategies of recent decades are now being reversed, with efforts being made to keep older workers in employment. The pressure for older workers to jump into an attractive early retirement scheme has been replaced by strategies to maintain their employment, utilising flexible human resource strategies and gradual pension and retirement plans. The lessons currently being learnt in accommodating older workers can be used in the job retention of disabled workers. In a recent survey of employer attitudes to the employment and retention of older workers in the UK, the argument was raised for partial pensions and part-time employment.⁷⁵

State pensions

Pension levels can affect older disabled workers' decisions about remaining in work or leaving (mainly full-time) employment. The present state scheme, under review, provides a pension of less than a third of the average male weekly wage. Its replacement should provide a higher pension for those who are totally dependent upon it while, at the same time, encouraging those in occupational and private schemes to invest more in second-tier pensions while working, so as to raise the level of income they enjoy on reaching retirement.

The basic state pension may be supplemented by:

- i) an additional pension from the state, known as the State Earnings-Related Pension Scheme (SERPS);
- ii) a company or occupational pension scheme;
- iii) a personal pension plan (PPP);
- iv) a retirement annuity contract;
- v) Additional Voluntary Contributions to an occupational pension scheme;
- vi) unapproved pension schemes; or
- vii) any other sources of income.

Occupational pensions

For British workers, the occupational pension market is confusing and risky, with the recent memory of Robert Maxwell's theft of £400 million from occupational schemes and the mis-selling of schemes adding to distrust by employees. Government has countered concern and sought to simplify the occupational pensions system with the introduction of major reforms under the new Pensions Act 1995 (now in force) and OPRA - the new Occupational Pensions Regulatory Authority - which became fully operational in April 1997. An independent report on the industry found that with 200,000 occupational pension schemes in the UK, together responsible for assets worth over £500 billion, as measured by premium income, the UK pensions market was valued at £21bn at current prices in 1995, an increase of 20 per cent over its 1991 value. Research indicates that 31 per cent of UK adults will receive some form of retirement income from a company scheme and 14 per cent from a private pension plan; but many are contributing at a level far too low to provide a reasonable retirement income.⁷⁶

Statistics from the General Household Survey (GHS) show that, in 1995, 80 per cent of men in full-time work were members of either an occupational pension scheme or a personal pension scheme, compared with 77 per cent of women working full-time and 35 per cent of women working part-time. Interestingly, approximately a quarter of both sexes worked for an employer who did not provide an occupational pension scheme. Men working full-time were more likely to belong to an occupational pension scheme (58 per cent compared to 55 per cent for women); nine per cent of men and 24 per cent of women working part-time belonged. Membership by part-time women workers has doubled since 1988. However, occupational pension schemes continue to discriminate against women. Periods of broken service interrupted by family duties lower the contribution rate and ultimately affect the pay-out levels.⁷⁷ Ethnic minorities are also under-represented in pension scheme memberships, especially Pakistani/Bangladeshi females.⁷⁸

Currently, there is an increase in early retirement on the grounds of ill health,⁷⁹ which may be a consequence of the current effort to keep older workers in employment. Formerly, disabled workers would have simply taken the early retirement option, whereas now they can, with private or employer support, take early retirement on the grounds of ill health.

The Pensions Act is expected to increase the popularity of defined contribution (money purchase) occupational schemes and move smaller companies towards group personal pensions (GPPs). Another opportunity exists in managed pensions, which are attractive for those with funds over £100,000 who are prepared to take a reduced pension, whilst allowing the fund to grow at a slower rate while waiting for more favourable annuity rates.

II.2 OPPORTUNITIES TO COMBINE WORK AND BENEFIT

II.2.1 Provision for combining income from work and from disability-related social security benefits

Given the 'all or nothing' system in the UK, opportunities to combine work and receipt of social security benefits have been minimal. There are limited opportunities for recipients of IB, SDA and IS (disability premium) to combine their benefit with income from work. The only benefit specifically designed for this purpose is the Disability Working Allowance, introduced in 1992 in an attempt to bridge the too stark choice between relying on benefits and relying on earnings.

Combining IB and SDA with work

Recipients of IB and SDA may undertake 'exempt work' on the advice of a medical doctor if it 'helps to improve, or prevent deterioration in, the disease or bodily or mental impairment' which causes incapacity for work. This provision, in so far as it is used, serves rehabilitative functions and is not directed at job retention. The rules allow the claimant to do some work without being considered as capable of work, thus avoiding disqualification from Incapacity Benefit. Exempt work is limited to 16 hours per week. It is also subject to an earnings limit of £46 per week. Earnings above that limit are taken as evidence of fitness for work and mean the complete loss of Incapacity Benefit. (Claimants may also undertake up to 16 hours a week of voluntary work which pays reasonable expenses only.^a) No data are routinely collected on take-up. According to research, this therapeutic earnings exemption was used by only around two per cent of eligible recipients and less than a fifth knew about it.⁸⁰ Some disability income pressure groups have suggested that 'therapeutic work' is seen by disabled people as patronising and consequently deters participation; others propose building on the concept to enable work experience as a route back to work.

Combining Income Support with work

Recipients of Income Support disability premium can work up to 16 hours a week if they declare their earnings. They may earn up to £15 per week before their benefit is affected. There is a little known special exemption to work up to 24 hours if the person's earnings are less than three-quarters of those of someone without a disability. The effect of these provisions on sustaining disabled people in work are not known.

Disability Working Allowance (DWA)^b

DWA was introduced in April 1992. The benefit is intended primarily to encourage disabled people off benefits

^a It was announced in March 1998 that the 16 hour limit on voluntary work was to be lifted.

^b It was announced on 17 March 1998 that from October 1999 a new Disabled Person's Tax Credit will replace DWA.

and into work, by topping up low wages or self-employed earnings and so making work more financially rewarding. As we will show, however, its main effects have been to maintain claimants in work and to support job retention.

DWA was introduced as part of a government policy that the benefit structure should provide incentives for disabled people to achieve independence through employment. DWA is aimed particularly at people on long-term incapacity benefits, to help them get back to work. The benefit is designed to encourage disabled people to give work a try, without risk of loss of entitlement to IB if return to work is unsuccessful within two years (as long as the person is still incapable of work).

DWA was also designed in response to the identified absence of help for disabled people who can do some work but are not fully able to support themselves. As *partial capacity* provision, DWA has two main aims:

- short-term rehabilitation - to enable disabled people returning to work to progress towards full-time work, through, for example, providing an opportunity to develop stamina or to build up skills or experience in a lower-paid job; and
- long-term support for disabled people who cannot work full-time because of a disability or who can work full-time but at reduced capacity.

DWA is strictly an in-work benefit. It was modelled on Family Credit, a means-tested benefit for families with children, where the wage-earner(s) worked for 24 or more hours a week. Like Family Credit, DWA only supplements low wages, or earnings from self-employment, and is not a general wage subsidy. Claimants of DWA must be in a paid job, of an average of 16 hours a week or more, which is expected to last at least five weeks. Claimants must also be receiving Disability Living Allowance (or a similar benefit payable under war pensions or Industrial Injuries Disablement Benefit), or have received IB, SDA or the disability premium with IS, Housing Benefit or Council Tax Benefit in the eight weeks prior to starting work. Qualification thus depends on current or past receipt of contributory, non-contributory or means-tested disability benefits.

For Disability Working Allowance the disabled person is required to be on a relatively low income on admission to the scheme. DWA is means-tested according to capital assets (a minimum of £3,000 and a maximum of £16,000) and the family's net earnings after tax and national insurance contributions (but disregarding some benefits). The weekly payment depends on whether claimants are single or couples and whether they have children; credits are payable for children. An earnings taper applies: for every £1 earned above the threshold, £0.70 is deducted. Once awarded, DWA is normally paid for the next 26 weeks regardless of any changes in income and most other circumstances. There is a supplement to the highest rate payable for people working at least 30 hours a week (introduced in 1995 at £10 and since up-rated).

II.2.2 Effects on numbers retaining and numbers returning to work

Disability Working Allowance

Compared with initial Government expectations, the results to date have been disappointing. It was estimated that about 50,000 people would benefit at any one time. By July 1997 in Great Britain, there were 13,550 recipients.⁸¹

As noted above, DWA was mainly aimed at getting long-term recipients of Invalidity and Incapacity Benefit back to work, but records show that in only one fifth of new awards was Invalidity or Incapacity Benefit the main qualifying benefit.⁸² The data indicate that, when SDA is also taken into account, at least 5,000 people left benefit and entered or re-entered work and were awarded DWA in the four-year period. According to a sample survey conducted as part of the major DWA evaluation commissioned by DSS in the period from spring 1992 to autumn 1995, only two per cent of the 1.5 million working-age recipients of one of the three main incapacity benefits moved off these benefits and into full-time work, almost all without the help of DWA.⁸³ It had been assumed that 70 per cent of the estimated 50,000 claimants would be people who had taken jobs in response to the benefit; the rest were expected to be already in work. The evaluation found that in October 1993 only 200 of the 3,500 DWA claimants had been encouraged into work by the benefit and that most recipients were already in work when they heard of it.

The evidence from the evaluation suggests that DWA's main role has been to sustain claimants in work for extended periods through subsidising their low earnings. It found that around two fifths of all those still in work two and a half years after they first claimed said that they would not now be in a job without DWA. In the four years to October 1996, 60 per cent of awards were renewals, suggesting that the benefit does have an effect as a long-term wage supplement.⁸⁴

Industrial Injuries Disablement Benefit

Industrial Injuries Disablement Benefit may be combined with earnings from employment without restriction but published statistics do not show numbers of recipients in work. A stratified sample survey of successful and unsuccessful claimants found that one third of successful claimants who had had industrial accidents were in employment, but the figure was only one in ten for those who had an occupational disease.⁸⁵

II.2.3 Impact of definitions of disability or capacity for work on access to and coverage of benefit programmes

Disability Working Allowance

The broad target group for DWA is: people whose disability puts them at a disadvantage in getting a job. Initial claims should be supported by a self-declaration that the claimant has a physical or mental disability which has that effect, guided by a list of functional disabilities. For subsequent claims, a self-assessment test may be required. This 'disability test' lists 20 areas (in mobility, dexterity and so on) where claimants may have a difficulty, and if any one applies the claimant is eligible. Renewal forms ask for the claimant to specify the disability which places them at a disadvantage and to name a professional who will confirm the assessment.

Those getting DLA at the higher rate (or previously SDA) are assumed to satisfy the disability test. The type of job held by the applicant, or the applicant's capacity to do that job, are not relevant.

In theory, the fairly liberal definition of disability and the system of self-declaration should not be deterrents to take-up of the benefit. The main obstacles appear to lie with the claiming conditions. A further argument from the DWA evaluation is that there is an in-built contradiction in the system whereby having recently received an incapacity benefit, which demonstrates *inability to work*, is a qualifying condition for an *in-work* benefit.

II.2.4 Effects of claiming and assessment procedures on take-up of in-work benefits

Initial obstacles to the effectiveness of DWA were the low number of claims and the high proportion of rejected claims (77 per cent) in the first 18 months. At that time, nearly four out of five claims were rejected because the applicant had not started work or because they did not receive a qualifying benefit. The proportion of successful claims has since risen. Those two obstacles to successful claims dominate the overall figures on reasons for disallowances between November 1992 and October 1996; in one third of disallowances the qualifying benefit test was not satisfied and in a quarter of cases the claimant was not in paid work.⁸⁶

In explaining the initial limited take-up of DWA, commentators focused on the qualifying requirements, the family-based means-test, the complex overlap with other benefits and the possibility that some claimants may be no better off on DWA, and the strict rules for the guaranteed return to IB within two years. These features of the benefit continue to attract criticism. There is evidence that awareness of the benefit has been low. A further identified obstacle to take-up is the requirement that claimants should be in work within eight weeks of leaving the qualifying benefits IB and SDA. The possibility of finding suitable work within eight weeks is limited, particularly for people who have spent some time out of the labour market.

II.2.5 Interactions between in-work benefits and other in-work income support programmes

DWA may be combined with wage supplements under the Supported Placements Scheme (see I.2.3).

Particular difficulties confront disabled people living in supported accommodation (with care) which is paid for by the state, who may lose their entitlement to that support if their earnings rise beyond a given threshold. Disabled people (notably people with learning difficulties) who want a 'real job' can be found working long hours for minimal wages to avoid jeopardising their living situation.

II.2.6 Disabled workers who benefit and those who miss out

Disability Working Allowance

No specific data are available on the characteristics of those DWA recipients who claim DWA in order to retain employment. The *DWA Statistics Quarterly Enquiries* show the characteristics of all DWA recipients. Around three fifths were male, one third of the total were aged between 30 and 39, two-fifths were aged 50 and over,

and two-fifths had children. About 60 per cent were single people. Over a third of all awards between November 1992 and October 1996 were to people in self-employment.

Information on types of disability is available only for renewed and repeat awards. Bearing in mind that claimants may declare more than one type of disability, it is nevertheless interesting to note that 'exhaustion and pain' accounts for over 40 per cent of all types of disability declared and confirmed in renewal awards made in the four years to October 1996.

In January 1996, the average number of hours worked was 27 per week, nearly half worked for between 16 and 24 hours and just under three in ten worked for 36 or more hours.⁸⁷ At that time, around two-fifths (3,400) received the premium for working 30 hours or more.⁸⁸ It has been argued that a reason for the failure of the benefit is the false premise that disabled men on the margin of work want short working weeks.⁸⁹ A further criticism is that the 16 hours per week threshold limits opportunities in the labour market for disabled people seeking part-time work. Many employers seeking part-time workers offer jobs of less than 16 hours to avoid payment of national insurance contributions which apply only to jobs of over 16 hours.

Classifications of industrial injury and disease

A key determinant in compensation for injury and illness at work is the classification of work-related injury and disease. Workers whose condition is covered under DSS medical classifications of industrial disease, for example asbestos-related lung disease, are supported better than workers whose condition is not accepted under the guidelines, for example chronic stress, back pain and diffused RSI.

Claims for industrial injury disablement benefit require higher than 14% incapacity to receive any financial benefit.

Reporting of industrial accidents

Workers cannot seek compensation unless their injury or ill health is reported in the first instance. The HSE attached a supplement of detailed questions on workplace injury and ill health to the 1995/96 Labour Force Survey (LFS) to compare the levels of injury reporting under the standard Reporting of Injuries, Diseases and Dangerous Occurrences Regulations (RIDDOR) classifications. The results were alarming, as the following table shows, and suggest that a large percentage of workers are suffering from work-related injury and ill health and are not being treated, compensated or otherwise accommodated by support services or compensation bodies.

Table III.3: Comparison of LFS and RIDDOR reporting rates

	<i>numbers reported</i>
annual number of reportable injuries to employees from the LFS	380 000
annual number of injuries reported to enforcing authorities (a reporting level of 40%)	150 000
annual number of reportable injuries to the self employed from the LFS	44 000
annual number of injuries reported to enforcing authorities (a reporting level of less than 10%)	3 800

Source: Health and Safety Commission (1996) *Health and Safety Statistics 1995/96*

Workers moving from short-term to long-term sickness coverage

Disabled workers who wish to take advantage of their occupational health plans can find themselves vulnerable when moving from the insurer's short-term sickness coverage to long-term sickness coverage. This was highlighted in a recent court case⁹⁰ where the employer stopped paying insurance premiums for the worker who was absent from work in accordance with the short-term sickness provisions. The worker was made redundant and was eligible also for the long term sickness insurance. The employer had not been making the contributions during the employee's spell of absence and the employee had to sue for breach of contract of employment.

II.3 TRANSITION BETWEEN BENEFITS AND WORK

II.3.1 The effects of the disability benefit system on return to work

The disability benefit system is biased towards restricting the return to work of newly disabled people. The definitions of disability used under the Disability Discrimination Act and those which are used to determine eligibility for incapacity benefits are very different. The very name 'Incapacity Benefit' assumes that a person is incapable of work. (This is far from the true picture as there are many disabled people currently working in a range of occupations within a number of different employment sectors who would be defined as incapable for work under the Incapacity Benefit regulations.) The system, which assesses incapacity rather than capacity, promotes a self-image of being incapable of work, compounding the negative image many disabled people may feel at the onset of their disability. The failure of the Incapacity Benefit system to recognise that it is not just the individual's impairment that affects their employability, and to consider factors such as adjustments to the working environment that would enable more significantly disabled people to work, means that the benefit system creates a trap preventing disabled people from returning to employment.

The other significant problem in relation to Incapacity Benefit is that if an individual leaves the benefit for a job but subsequently loses it, he or she will be required to undergo a further assessment for Incapacity Benefit.^a This will take a considerable period of time, resulting in the disabled person remaining on unemployment benefits, which are at a lower level than Incapacity Benefit.

The belief that out-of-work benefits are a disincentive to work has heavily influenced the social security system and the level of benefits, relative to earnings, has been reduced. Equally it is assumed that people need financial incentives to take up work. Reforms in 1995 to the system of long-term incapacity benefits reflect those two beliefs. The new functional capacity tests for incapacity benefits, for instance, were designed to tighten up eligibility and encourage newly ineligible recipients to look for work. Restrictions on eligibility and reviews of existing beneficiaries' entitlement were intended to focus income replacement benefits on those 'genuinely' incapable of work and to redirect those with partial capacity for work to unemployment benefits (Jobseekers' Allowance - JSA). Concern has been expressed about the outcomes for disabled people no longer entitled to IB who, nevertheless, are not well-placed to find and take up work. It had been anticipated that 200,000 ex-recipients of IB would claim unemployment benefit (now Jobseekers' Allowance) in 1995-96; 40,000 did so.⁹¹ It was estimated that a third of those found capable of work under the all work test and not entitled to unemployment benefit would be newly entitled to income support.⁹²

Moreover, DWA has so far had limited success as a route into work for people with partial capacity for work. (Re-)entry to work from benefit may be adversely affected by the rule that requires DWA to be claimed in work and within eight weeks of leaving long-term incapacity benefit.

II.3.2 Provisions for financial support to disabled workers for transition between benefits and work

There are no specific social security benefits to support disabled people in the rehabilitation period. Employment Service employment rehabilitation programmes can be undertaken by claiming a Rehabilitation Allowance but in most cases should be accompanied by a claim for Income Support.

DWA recipients who previously received IB may return to that benefit at the previous level of award within two years if employment is unsuccessful (providing they apply within eight days of leaving work). However, as few DWA claimants previously held IB and have subsequently left work, this provision has been little used. It was designed to reduce uncertainty in returning to work but critics say that the conditions are little known and in any case too restrictive.

There is no temporary income support in the benefits system for trial periods, other than the very restrictive use of 'exempt earnings' (described in II.2.1). There is one small scheme, the Job Introduction Scheme (JIS) run by Employment Services (see I.2.3), which subsidises employers' wage costs, usually for six weeks, on condition that the job is likely last at least six months. However, this supplement does not translate into higher wages for

^a It was announced on 17 March 1998 that from October 1998 former claimants of long-term incapacity benefits who lose a job within one year of taking it up will be able to return to Incapacity Benefit at whatever rate they were previously being paid.

the employee than otherwise might have been offered. An evaluation of JIS, commissioned by the DfEE, is underway, with the aim of questioning whether there is still a need for the scheme.

There are no social security benefits specifically for disabled people in the period between leaving incapacity benefits and taking up employment.

Disabled people can join mainstream Training for Work (see Part III) without the usual required period of six months' unemployment, proving that they are endorsed as disabled by Employment Services. Disabled people undertaking Training for Work can receive the Training Allowance, which is equivalent to any benefit they are entitled to, plus a £10 addition. Eligibility for IB is retained for two years (as is the case when taking up DWA). People can train part-time if they have a disability or have domestic responsibilities that prevent them from training full-time. Under the outcome-based funding arrangements, there are financial incentives to providers to take on disabled people but the screening out of people with the greatest needs is a problem.

II.3.3 Effect of entitlement to benefits in kind on return to work

Disabled people who take up work and claim DWA retain eligibility for some free National Health Service (NHS) provision (for example, dentistry, eye-tests and prescriptions). This provision, added to the benefit in 1995, is intended as an incentive. An evaluation commissioned by DSS on the effects of the 1995 changes found no discernible incentive effect.

Recipients of out-of-work disability benefits receive similar concessions (entitlement to claim for free NHS prescriptions, dental treatment, sight tests, wigs and fabric supports, vouchers towards the cost of glasses or contact lenses, and the repayment of reasonable travel costs to hospital and back for NHS treatment). There is no evidence that the risk of loss of those concessions inhibits recipients from returning to work.

II.3.4 Co-ordination between agencies in assessment for benefits eligibility

The 1995 reforms have highlighted the problems of division of responsibility for assessment of eligibility for benefits. The new Labour Government is currently considering 'welfare to work' options which should lead to improved co-ordination between agencies which assess eligibility for social security benefits and provide support for return to work. A number of proposals for new types of co-ordinator have been floated by interested bodies.

An interesting aspect of the proposed training package for GPs (see II.1.2) is the potential role of the GP to case manage the job retention or return to work programme of the patient. The package encourages the GP to support agencies and the employer, and to employ a range of resources to support the employment of the patient. This begs the question of who is to pay for the GP's effort in pursuing this role as case manager of such a co-ordinated care programme. In the opinion of one informant, the strength in this approach is that the GP, in his/her confidential role, may be well placed to provide impartial service - a point on which many co-ordinated care programmes flounder. GPs have demonstrated a willingness to collaborate with the HSE in the SWORD and EPIDREM programmes where the doctors provide a high quality database on case typologies of patients suffering from work-related lung disease and skin diseases respectively.⁹³

ENDNOTES

- ⁵⁴ Pickvance, 1997.
- ⁵⁵ Croner, 1997c.
- ⁵⁶ Cited in The Stationery Office, 1997.
- ⁵⁷ Office for National Statistics, 1997.
- ⁵⁸ Howard and Thompson, 1995.
- ⁵⁹ Whiteford, 1996.
- ⁶⁰ RADAR Bulletin, No 263, 1996.
- ⁶¹ Birkin and Meehan, 1997.
- ⁶² The package is currently being reviewed by the medical accreditation body in the UK.
- ⁶³ Pickvance, 1997.
- ⁶⁴ Pickvance, 1997.
- ⁶⁵ Mills, H. 'Poor "will lose out" as legal aid ends', *Observer*, 19/10/97:4.
- ⁶⁶ Pickvance, 1997.
- ⁶⁷ Interview with marketing manager of large UK insurer.
- ⁶⁸ Tremlett and Dundon-Smith, 1995.
- ⁶⁹ Croner, 1997a.
- ⁷⁰ Tremlett and Dundon-Smith, 1995.
- ⁷¹ *Hansard*, 7/2/94, cited in Howard and Thompson, 1995.
- ⁷² Pickvance, 1997.
- ⁷³ Pickvance, 1997.
- ⁷⁴ Erens and Ghate, 1993.
- ⁷⁵ Guillimard *et al.*, 1996.
- ⁷⁶ Key Note, *Occupational Pensions Report*, Executive Summary, February 1997.
- ⁷⁷ Whiteford, 1996; Midwinter, 1997.
- ⁷⁸ Burton, 1997.
- ⁷⁹ IRS Employment Trends 581, 1995.
- ⁸⁰ Lonsdale *et al.*, 1993.
- ⁸¹ Department of Social Security, 1997a.
- ⁸² Department of Social Security, 1997b, Table 9.

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- ⁸³ Rowlingson and Berthoud, 1996.
- ⁸⁴ Department of Social Security, 1997b.
- ⁸⁵ Tremlett and Dundon-Smith, 1995.
- ⁸⁶ Department of Social Security, 1997b.
- ⁸⁷ *Hansard*, cols 320-1, 1/7/96.
- ⁸⁸ *Hansard*, col. 321, 1/7/96.
- ⁸⁹ Rowlingson and Berthoud, 1996.
- ⁹⁰ Bainbridge v Circuit Foil UK Ltd.
- ⁹¹ *Hansard*, col.324, 1/7/96.
- ⁹² *Hansard*, col. 247, 31/10/96.
- ⁹³ Interview at HSE with Howard Saunders.

The other significant problem in relation to Incapacity Benefit is that if an individual leaves the benefit for a job but subsequently loses it, he or she will be required to undergo a further assessment for Incapacity Benefit.^a This will take a considerable period of time, resulting in the disabled person remaining on unemployment benefits, which are at a lower level than Incapacity Benefit.

The belief that out-of-work benefits are a disincentive to work has heavily influenced the social security system and the level of benefits, relative to earnings, has been reduced. Equally it is assumed that people need financial incentives to take up work. Reforms in 1995 to the system of long-term incapacity benefits reflect those two beliefs. The new functional capacity tests for incapacity benefits, for instance, were designed to tighten up eligibility and encourage newly ineligible recipients to look for work. Restrictions on eligibility and reviews of existing beneficiaries' entitlement were intended to focus income replacement benefits on those 'genuinely' incapable of work and to redirect those with partial capacity for work to unemployment benefits (Jobseekers' Allowance - JSA). Concern has been expressed about the outcomes for disabled people no longer entitled to IB who, nevertheless, are not well-placed to find and take up work. It had been anticipated that 200,000 ex-recipients of IB would claim unemployment benefit (now Jobseekers' Allowance) in 1995-96; 40,000 did so.⁹¹ It was estimated that a third of those found capable of work under the all work test and not entitled to unemployment benefit would be newly entitled to income support.⁹²

Moreover, DWA has so far had limited success as a route into work for people with partial capacity for work. (Re-)entry to work from benefit may be adversely affected by the rule that requires DWA to be claimed in work and within eight weeks of leaving long-term incapacity benefit.

II.3.2 Provisions for financial support to disabled workers for transition between benefits and work

There are no specific social security benefits to support disabled people in the rehabilitation period. Employment Service employment rehabilitation programmes can be undertaken by claiming a Rehabilitation Allowance but in most cases should be accompanied by a claim for Income Support.

DWA recipients who previously received IB may return to that benefit at the previous level of award within two years if employment is unsuccessful (providing they apply within eight days of leaving work). However, as few DWA claimants previously held IB and have subsequently left work, this provision has been little used. It was designed to reduce uncertainty in returning to work but critics say that the conditions are little known and in any case too restrictive.

There is no temporary income support in the benefits system for trial periods, other than the very restrictive use of 'exempt earnings' (described in II.2.1). There is one small scheme, the Job Introduction Scheme (JIS) run by Employment Services (see I.2.3), which subsidises employers' wage

^a It was announced on 17 March 1998 that from October 1998 former claimants of long-term incapacity benefits who lose a job within one year of taking it up will be able to return to Incapacity Benefit at whatever rate they were previously being paid.

III. EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

This Part examines the integration of personal support and rehabilitation services within the workplace. It deals with the external support services available to individual workers and their employers where continued employment is at risk because of disability. (Internal services, initiated and managed by enterprises, will be covered in Part V.) The discussion also includes services for early return to work once employment has been lost.

The main focus is on service interventions which support job retention by employees who become injured, ill or disabled and also their return to employment during the process of recovery. It concerns active rehabilitation services that help disabled people to recover capacities and skills, as well as services that support their re-adjustment to work. (Services involving adaptations to the work environment and to working arrangements will be discussed in Part IV.)

More specifically, sections III.1 to III.5 will cover policy about employment-related personal support and rehabilitation services, provide details of services and their providers, and describe the service beneficiaries. The remaining sections will examine the factors influencing the effectiveness of support services for job retention and early return to work. They include a discussion of relationships between the various employment support and rehabilitation services, their relationship to the employment sector, and their interaction with employment policies and compensation and benefit programmes.

Note

There are no state services designated solely for job retention. A small number of voluntary providers emphasise job retention within their range of provision. Commercial services working directly with employers are beginning to emerge, prompted by the Disability Discrimination Act 1995. Insurers' involvement in actively supporting job retention is almost non-existent.

In the comments which follow, we have attempted to distinguish provision for job retention within services which typically serve people seeking first time entry to work and return to work. However, this does not reflect a real distinction in policy or practice terms.

III.1 POLICY AND RESPONSIBILITY FOR POLICY AND PROVISION

III.1.1 The main bodies responsible for employment support and rehabilitation policy, and links to other agencies with employment or benefits/compensation responsibilities

The Employment Service

The most significant body in relation to job retention and return to work is the Employment Service (ES), an agency within the Department for Education and Employment (DfEE) which is responsible for employment support services and for vocational rehabilitation. It controls a network of 1,100 local employment offices (Jobcentres), which provide services to help people find work, pay benefits to eligible unemployed people, and offer a vacancy-filling service to employers. ES was created in 1987 and became an independent Executive

Agency in April 1990. At a local level ES operation is divided into regions: regional centres are responsible for the operation of local Jobcentres.

It is possible to discern two main roles of the ES: an 'enabling' role in advising and helping the unemployed and other groups disadvantaged in the labour market; and a 'policing' role related to its functions of paying benefits or allowances, essentially discouraging clients from pursuing new claims and checking on eligibility.⁹⁴ The ES has been under continuing pressure from central government to reduce its operating costs and obtain better 'value for money'. In 1995 it reduced a whole management tier and associated costs. Market testing, contracting out and cost reviews have been introduced to help secure efficiency savings, for which annual targets are set.⁹⁵ New value for money initiatives are a business review process and a performance indicator programme.

ES gives prominence to offering disabled people particular help. Apart from 'the longer-term unemployed', no other group is specifically mentioned in ES statements of objectives. It should be noted that ES services are directed at unemployed people; only in the case of disabled people is mention made of help and advice in relation to retaining work.

ES Disability Services

Disability Services (DS) are part of the ES. The DS aim to: help into open, supported or self-employment those disabled people who face particular difficulties in the labour market; promote the value of disabled people and the range of Employment Service to employers; and provide advice and assistance to enable disabled people to remain in employment.

The nine regional DS provide a range of services including specialist assessment, contract management and development, and improvement of services within the regions. The new Labour government has cancelled the previous Conservative government's plans for 'market testing' of DS in one region, a proposed move which was widely considered to be the first step towards privatisation.

DS also run the Major Organisations Development Unit (MODU), which works with large companies, advising on the development and implementation of effective policies to recruit, retain and offer good career opportunities to disabled people.

PACT services

DS currently provide a range of services to disabled people and to employers through a network of around 60 Placement Assessment and Counselling Teams (PACTs) located within the regions. PACTs provide services to disabled people referred to them who require additional help because of the severity or complexity of employment barriers associated with their impairment. PACTs were introduced in the early 1990s. PACT services are provided through Disability Employment Advisers (DEAs) (based in Jobcentres) who work with occupational psychologists, technical consultants and other specialists, as well as an administrative team.

Other bodies

Medical rehabilitation policy is principally the responsibility of the Department of Health; such rehabilitation focuses on improving functioning and skills in daily living but does not normally extend to employment rehabilitation. A third party at national level is the Department of Social Security (DSS), responsible via the Benefits Agency (BA) for providing disability-related benefits, but with no direct responsibilities for rehabilitation.

Policy links between the DfEE and DSS at national level are stronger than those between their agencies (ES and BA).

Non-statutory agencies, mainly in the voluntary sector, are significant influences on the shape of employment support and rehabilitation in terms of both policy and provision.

Co-ordination concerns

The Inter-Departmental Group on Disability established a sub-group, chaired by the Department of Health, to look at concerns about the co-ordination of rehabilitation services for disabled people in England. Its brief was to 'consider ways of improving communication and co-ordination of service planning and delivery between national and local statutory and non-statutory agencies concerned with the rehabilitation, education and training (including employment) for people with disabilities and to report'.⁹⁶ The sub-group was particularly concerned with the progression *towards* possible employment; its brief did not address job retention specifically. It did not consider the role of the Benefits Agency.

Although there is a regional structure for the ES, the Benefits Agency and the NHS, the regions are rarely co-terminous.

There appears to be reasonable continuity between the National Health Service rehabilitation programmes and the social security benefits system. There is less continuity between the provision of employment support and the benefits system but the position is set to improve with the new Labour government's Welfare to Work programme. However, a considerable disparity exists between employment support mechanisms and the delivery of medical rehabilitation services.

III.1.2 The relative priority accorded to support for retention, return to work and first time entry to employment

There is no apparent formal priority accorded to retention, return to work or first time entry to employment. It appears that the importance given to these particular issues is dependent upon the demands placed on these services by the individual disabled person. In other words, a disabled person who is very proactive in demanding an effective and efficient service is more likely to receive it, whilst a disabled person who does not feel so positive or determined about their future is less likely to be provided with effective support.

The original stated aims of the PACTs were to get 'unemployed clients who are capable of work into jobs', to help 'those not capable of work onto appropriate benefits' and to assist 'people at risk of losing their jobs to retain them'.⁹⁷ Nevertheless, it is clear from the wording of the aims and methods of working of DEAs and of the objectives of Employment Rehabilitation Programmes (see III.2.1) that support to individuals to help them to retain their job when they become (more) disabled is a lesser concern than return to work or first-time entry.

The new Labour government, elected in May 1997, has drawn a distinction in public statements between measures to help disabled people into work and measures to help them stay in work. The Welfare to Work programme for disabled people is likely to focus ES attention on people at risk of losing their employment.

III.1.3 The weight given to employment support and rehabilitation policies for disabled people in the national system

There has been limited investment in active vocational rehabilitation programmes. The majority of resources for rehabilitation has been made available through the NHS. This has resulted in the development of a very medicalised rehabilitation service. As a result, the connection between rehabilitation services and employment services is weaker than it might be. Many more resources have been pumped into providing benefit systems which maintain disabled people as passive recipients of care and inactive citizens.

III.2 SUPPORT SERVICES FOR JOB RETENTION

III.2.1 The main funders and providers of services to support job retention

Mainstream services

ES frontline staff provide a placing service for those disabled people who do not need help from specialist services, covering those who are thought to be 'job ready', well adjusted to their disability and able to apply for and obtain work in open employment without any significant ES assistance. ES help for disabled people is delivered mainly through the range of mainstream employment and training programmes and services, to which disabled people have priority access.

Training and Enterprise Councils and Local Enterprise Companies (see I.7.2), funded from the ES budget, arrange mainstream vocational training for disabled people.

DEAs, with specialist and administrative support, provide advice, employment assessment and support, including:

- advice and guidance on how best to find the most suitable jobs, occupation or training
- work preparation or employment rehabilitation, including job trials with an employer
- the Job Introduction Scheme, which offers a chance to try out a job for an introductory period
- the chance to try out equipment and special aids
- equipment, special aids or on the job support using Access to Work
- access to training to update and gain new skills
- assessment for eligibility for jobs in the Employment Service Supported Employment Programme with Remploy, local authorities and voluntary bodies including opportunities in placements with host firms under Supported Placement Schemes (SPS) and Remploy's Interwork Scheme
- advice to employers on implementing the disability symbol commitments and on good practice in employing disabled people.

DEAs provide advice, guidance and counselling to disabled people in order to identify individual employment needs and prepare an action plan. *DEAs* use a goal-based approach to identify and confirm employment objectives and plan steps to achieve them. These objectives could relate to a new job, or to retaining an existing one. *DEAs* use counselling when appropriate to build confidence, facilitate decision making and increase motivation.

Employment Support and Rehabilitation Services - UK

Local Occupational Psychology Services (LOPS) provide employment assessment and counselling. These services may be required for those ES DS clients who face greater difficulties in the labour market. This might include those with severe visual or hearing impairment, congenital disability, progressive disorders, psychiatric and behavioural problems, dyslexia, severe or multiple disabilities, and those who have experienced recent trauma or injury. Occupational psychologists' assessment services may cover analysis and diagnosis, including ergonomic assessment and solution planning.

Additional assessment measures may be used as part of the employment assessment process where needed, including occupational interest inventories, work sampling (e.g. Valpar work samples), psychological testing and ergonomic assessment. Some additional assessments may be contracted out, for example dyslexia assessment or visual impairment assessment. These are funded from the Employment Rehabilitation budget (see below). In addition, ES DS contracts out occupational health assessments.

Concerns have been expressed about the relatively low status of ES employees in PACTs. In the past, working with disabled people was not viewed as a high status occupation. Many PACT staff are trained on the job and do not have access to education in related disciplines. They are not required to get any particular qualification and there is no association to monitor good practice.⁹⁸ The recently established voluntary National Vocational Rehabilitation Association is consulting with members on accreditation for those working in vocational rehabilitation and allied fields.

Employment Rehabilitation Programme

The principal funding which might support retention comes from the Employment Service. Under the terms of its remit, the ES may only fund rehabilitation for disabled people which has an employment focus and where the individual is almost ready to (re-)enter the labour market.⁹⁹ PACTs accordingly have budgets with which to purchase rehabilitation for their clients. In 1995/96 the ES spent £8.1 million on the Employment Rehabilitation Programme. This programme provides advice, guidance and practical help to enable job seekers to:

- understand the effects of disability on work-related activities through: providing periods of appropriate and closely monitored work experience to enable disabled people to adapt to a new work environment; fostering positive attitudes and 'objection handling' techniques; identifying barriers connected with the effect of disability in work; working with job seekers to develop effective coping strategies; and identifying needs for appropriate additional support.
- build confidence to pursue work opportunities effectively through: identifying reasons for lack of confidence; providing opportunities for recognising their existing strengths and potential; devising strategies for confidently tackling change; and projecting positively their abilities to others.
- make an informed occupational choice by: identifying and appreciating the value of their existing skills and potential and matching these with the physical and intellectual requirements of locally available jobs; sampling various occupations and deciding on the occupation they wish to pursue; exploring ways in which their capability might be enhanced by considering new job options, sampling new skills or the provision of additional support; and identifying and assessing their ability to undertake further training or education where appropriate.

- enhance interpersonal skills at work by: assessing and undertaking their current behaviour; identifying areas for improvement; and utilising strategies for making their dealing with others as effective as possible.
- develop the physical ability to cope with work: recognising their current physical capacity and potential; and building up their physical stamina to undertake work.

Employment Rehabilitation agents are expected to tailor each programme to achieve the specific employment-related objectives agreed between the client and the DEA to meet the client's needs. The duration of the client's programme will depend on the range and nature of needs identified or the objectives agreed. Some programmes will last a matter of hours, others days or weeks. Recent Employment Rehabilitation development work undertaken on a regional basis within ES DS has focused on increasing work placements as a way of enabling the client to get experience in a variety of real work environments. In addition to this, personal development programmes have been developed using a groupwork approach to develop interpersonal skills and foster client involvement.

Ability Development Centres

Until the early 1990s, the Employment Rehabilitation Service was provided through a national network of 27 Employment Rehabilitation Centres (ERCs), several of which were residential, alongside a small number of the more limited Assessment Centres. In 1991, about one-fifth of the service was contracted out, usually to voluntary organisations such as the Royal National Institute for the Blind (RNIB) or the Royal National Institute for Deaf People (RNID) to provide specialist rehabilitation placements for people with specific impairments.¹⁰⁰ ERCs were criticised for focusing on rehabilitation to manual or lower-skilled work which perpetuated the occupational pattern of disabled people.¹⁰¹ Increasingly the centres came to serve high proportions of clients who had been out of work for long periods, including non-disabled people.

In April 1991 the Government announced that, over the following five years, employment rehabilitation would progressively be removed from ERCs and contracted out to external agencies. By the end of 1992, all ERCs had been closed. The ES kept control of nine 'centres of excellence', now known as Ability Development Centres, which directly provide extended practical assessment and work preparation programmes for disabled people in their catchment areas, as well as providing solutions to equipment needs. They also research and develop new or alternative techniques in providing employment advice, assessment and practical help, design and deliver training programmes for agency rehabilitation staff and provide training for PACTs.

Local authorities

Local authorities are major sources of funding for organisations providing supported employment, usually for people with learning disabilities. Some local authorities have staff with responsibilities for economic development, training and employment. Local authorities may also play a part at local level in determining employment support and rehabilitation for disabled people through their community care policies. Local authority Social Services Departments work with the NHS and other agencies to arrange community care for disabled people with the aim of enabling them to live as independently as possible, preferably in their own homes, and taking into account their own needs and wishes; however, employment support is not necessarily an ingredient of assessment or a component of the ensuing 'care package'. Local authorities and the local NHS employ occupational therapists, but they rarely specialise in vocational services. Local authorities are responsible for people whose disability is

so severe that they are unable to take part in 'real work'; they have powers to provide therapeutic activities in day centres and 'training' centres.

NHS services

Local NHS services include community mental health teams, rehabilitation consultants, wheelchair and equipment centres and specialist help for people with sensory impairments. Some specialist NHS services, such as those for spinal injuries, are provided at regional or national level.

The non-statutory sector

The strengthening of the independent sector was a central plank of Conservative government policy. In the 1990s, the reduction of direct provision by ES and the increase in contractual arrangements between the ES and independent providers have increased the number and range of non-statutory services, primarily in the fields of work preparation, training, placement and post-placement support. Independent private or voluntary agencies may provide services under contract to ES, TECs, the NHS or local authorities.

Voluntary organisations

There is a long history of voluntary provision of specialised, impairment-specific services, some of which can trace their history back to the eighteenth century. There is now a large number of not-for-profit voluntary sector organisations which deliver rehabilitation-based services. Most tend to be impairment-specific. Organisations which specialise only in support for retention are very rare indeed. The Royal National Institute for Blind People (RNIB) stands out as a voluntary organisation with a long-standing interest in services to support job retention and return to work. Some organisations representing the interests of and providing services for people with mental health problems are now turning their attention to job retention and return to work services. Many of the other large and influential voluntary organisations provide services for people who are already disabled when entering the labour market (notably, people with learning disabilities, those with cerebral palsy and people who are Deaf) and thus are concerned more with access. That said, there is increasing provision to maintain in employment those for whom access has been achieved. There are also some non-impairment specific disability organisations beginning to explore ways of providing services for job retention.

In addition to the funding provided through contracts with central Government, some not-for-profit organisations may have secured grants for job retention initiatives through European Social Fund programmes like the HORIZON initiative. This programme provides funding, to match local resources, for the delivery of training and other employment rehabilitation programmes for disabled people. In the 1995-97 tranche of HORIZON projects, almost none focused on retention, while in the programme starting in January 1998 a rather greater interest in retention is likely to be found.¹⁰²

Private sector

In addition to the afore-mentioned agencies there are a number of commercial organisations operating in the field of employment rehabilitation and training for people who are currently seeking to enter or return to the employment market. Again, as far as we can tell, no commercial organisation specialises only in support for retention.

A number of small companies which employ and are managed predominantly by disabled people now provide disability equality training to other employers. These small entrepreneurs are in a good position to diversify into job retention services.

Most insurance funds have been developed to provide disabled people with income rather than rehabilitation.

III.2.2 Relationships between the providers of services and bodies with policy responsibilities

The relationship between providers of services and bodies with policy responsibilities is usually subject to a service contract. The range of service providers is so broad that these service contracts can be very varied.

The shift to contractual private agency provision of services away from direct state involvement in the provision of rehabilitation services has been noted above. The ensuing complexity and range of service standards and contracts can be disruptive to the rehabilitation of individual workers and become inequitable across sectors and regions. The theory of the market is that, when coupled with firm performance standards, the emerging agencies can provide competition for contracts and quality improvements in resultant service delivery. However, the types of outcomes specified in service contracts are unsophisticated and not necessarily well-tailored to ensure that they reflect the needs and preferences of disabled users.

In response to the Labour government's 'New Deal' there is likely to be increasing competition amongst service providers, professional associations and service provider training institutions to take ownership of job retention strategies for disabled workers. In the UK, the human resources profession and occupational health profession are generating some competition in this area.¹⁰³ Considerable gains are to be achieved for demonstrating leadership in the delivery of the more enterprise-based rehabilitation programmes which have, in the past, been dominated by the medical/health disciplines and which now require a multi-disciplinary approach.

Accreditation of service providers for job retention programmes involves competition among accrediting educational institutions and professional associations. As service practitioners come to appreciate the inter-relationship between the worker's health, working capacity, workplace adjustments, work routines and motivation, it is expected that new training courses will develop and compete in Britain over the coming few years.

III.2.3 The range and types of services provided

As noted, there are very few services designed specifically for job retention. Among those provided through the Employment Services, Access to Work is by far the most significant programme in terms of the proportion of assistance given to people already in work. There appears to be substantially more central Government funding for adjustments to the workplace rather than a provision of assistance from specialists in social, medical and vocational rehabilitation. Users of assessment and counselling by PACT members and of agency-provided rehabilitation are predominantly unemployed disabled people and disabled people who have never had paid employment. We have not found any examples of independent agencies contracted to ES specifically to support employees who become disabled.

The background to the Access to Work (ATW) scheme is set out in I.2.3. The great majority of recipients of ATW measures were already in work when they applied for help. The table shows the types of support provided to ATW recipients when the scheme was evaluated after one year.¹⁰⁴ Personal support services (personal reader service and support worker) together made up ten per cent of measures, although it should be noted that this type of support is likely to be on-going rather than one-off. Special aids and equipment made up over four-fifths of measures. (More details of these measures are given in Part IV.)

Table III.1: Types of support provided to Access to Work (ATW) Recipients

<i>Type of support</i>	<i>Percentage</i>
Assisted fares to work (AFW)	17%
Adapted vehicle (AV)	1%
Adapted premises/equipment (APE)	7%
Special aids and equipment (SAE)	82%
Personal reader service (PRS)	4%
Support worker (SW)	6%
Communicator support at interview (CSI)	3%
Other types of support	2%

Source: Beinart, S., Smith, P. and Sproston, K. (1996).

The table shows that ATW is overwhelmingly directed towards services which adapt the work environment to the needs of individuals. We have no detailed information about rehabilitation services (helping disabled individuals to recover capacities and skills) and services supporting re-adjustment to work.

III.2.4 Characteristics of enterprises using external support services for job retention

Employers seeking help for an employee who becomes disabled are encouraged to approach DEAs by the PACT publicity material and the extensive guidance produced by independent organisations. Awareness of DEAs and their functions is limited. In the case of ATW, most approaches are made by disabled people themselves.¹⁰⁵

There are no criteria applying to enterprises for entry to ATW, other than the cost-sharing requirements.

III.2.5 The prevalence of externally provided support services

As noted, there are few services apart from ATW that actually provide support to disabled people and employers for job retention. The range of externally provided support services which could be used for job retention is enormous, if measured by the very large number of providing organisations, large and small. (However, their

services sometimes seem to differ from one another only in that they are directed to separate disability groups.) While employers report a demand for advice and assistance for job retention, the profile ration of external organisations with differing or overlapping remits and different funding regimes makes access problematic. Coverage is uneven both across regions and across disability. These organisations compete for limited funding and philanthropic support without a great deal of cooperative effort. Some of these associations tend to espouse the 'charity' case, others argue the 'business' case, while increasingly provider organisations led by disabled people promote the social model of disability.

The situation has been described by commentators who work within the Employers Forum on Disability as a minefield, creating confusion and avoidance by employers. What employers really want is an effective one-stop shop which recognises their needs as customers, so that they might deliver effective policies and procedures to retain or re-employ disabled people.¹⁰⁶

While some independent organisations may well wish to be responsive to an emerging 'market' for job retention support, they are dependent on existing funding structures where PACTs, TECs and the European Social Fund determine the services needed.

A further obstacle is the resistance in some parts of the voluntary sector to redirecting resources to those who are already privileged in having a job, to the possible detriment of those who have never worked.¹⁰⁷

III.2.6 Arrangements for external providers to organise support in the workplace

There are few data in this area. Anecdotal evidence suggests that arrangements tend to be piecemeal and generally ineffective.

Historically, the effectiveness of DEAs and their predecessors (Disablement Resettlement Officers - DROs) was limited by their double-edged role of at one and the same time policing the quota scheme and persuading employers to take on disabled people. The abolition of the quota is likely to increase the acceptability to employers of agents of Employment Services. There is anecdotal evidence that latterly the focus of PACT attention has shifted towards interventions to prevent job loss or to support retention. The introduction of the Disability Discrimination Act and the cumulative effects of decades of encouragement to employers to develop and implement retention policies, as noted in Part I, appear to have increased employers' receptiveness to the idea of external help.

In theory, as DEAs visit employers' premises to place unemployed disabled people, they are in a good position to provide advice and support relating to job retention. The potential of this role may be over-stated, however, as it is clear that visits to the workplace for follow-up support are unusual in some PACTs.¹⁰⁸ One perspective on employers' reactions to external agents is their wariness of publicly funded rehabilitation providers whom they perceive as self-serving; it has been suggested that employers are annoyed at dealing with non-disabled intermediaries who seem to be reliant on the existence of passive disabled workers for their own employment.¹⁰⁹

According to the Employers' Forum on Disability (EFD), most of the publicly funded service providers have little understanding of the human resource perspective. The training of vocational rehabilitation providers should include an understanding of the work environment and measures of productivity. The EFD has progressed in this area and in autumn 1997 is campaigning to provide every GP (family doctor) in the UK with an information pack on disabled workers and employment/employer issues.¹¹⁰

There is increased awareness of the need to adequately train PACT staff and other service providers in the area of Disability Management and rehabilitation counselling. City University began a postgraduate Diploma/MSc in Disability Management in Work and Rehabilitation with the aid of EU funding in 1992 (and now complements this with short courses and in-house training). This is the first initiative in postgraduate studies of this type in the UK.

III.2.7 The extent to which services support job retention

Helping people who become disabled to retain their job, and supporting their employers to do so, is one of the formal aims of the PACTs, but there is only limited publicly available evidence on the extent to which they do so. Although support for retention of people who become disabled is consistently publicised as a function of PACT members, retention is not used in any analyses of their activities. Historically, PACT members, and their predecessors, have focused on assisting disabled people who are out of work.

An autumn 1996 survey of PACT clients and services, commissioned by ES from Social and Community Planning Research (SCPR) asked 700 clients about services offered to them by a PACT since initial assessment six months previously, and about their subsequent labour market experiences.¹¹¹ The data in Table III.2 show that the emphasis was on training, rehabilitation and (re-)entry. Only a minority of clients may have used PACT to support job retention: at the time of the PACT assessment, 13 per cent were in full-time work and five per cent in part-time work. However, it is not clear what this group wanted or got from assessment.

Access to Work

Access to Work (ATW) mainly helps people already in jobs, although it was originally introduced to promote entry and return to employment for unemployed people. The bulk of ATW help falls into the category of adaptations to work and workplace. ATW seems to be little used specifically to help the disabled person to re-adjust to the job.

A report on some experiences of the first year of ATW by a monitoring group of disability organisations¹¹² suggested that not enough was being done to raise awareness among employers and employees themselves of the support it could provide if someone develops a disability while in a job.

The average cost of supporting a disabled person in work with ATW is £1,800 per year.¹¹³

Table III.2: Post assessment experiences of PACT clients, March -Sept 1996

	%
attended or attending work preparation/rehabilitation programme	14
attended or attending training course	16
attended or attending sheltered workshop/supported employment	1
started some new paid work since March 1996	24
received 'ATW-type' help	25*
referred to non-specialist staff	6
no post-assessment work/training experience	26

N=700

* 15 per cent had received PACT-funded ATW help such as AFW, PRS, SW, CSI, APE, AV or SAE; a further three per cent has received this 'ATW type' help but funded from other sources, eg employers; seven per cent had received such help but were unsure how it had been funded.

Source: Beinart, 1997

III.3 USERS OF SUPPORT SERVICES FOR JOB RETENTION

III.3.1 Eligibility criteria and procedures for identifying users (disabled workers and their employers)

There do not appear to be any well-established national eligibility criteria for the users of support services which cover job retention. However, there is the opportunity for self-referral. All the relevant systems are compounded by administrative delays.

Access to Work

Published evaluations of ATW relate to the first year or so of its operation; publication of the results of the second ES commissioned survey is due in 1998. Evidence from the first year indicates the popularity of the scheme with numbers seeking support increasing significantly in its first year of operation. It was welcomed for the greater flexibility in provision of support which ensures that support is more effectively targeted at the needs of the individual; for example a visually impaired person is not restricted to the previous personal reader scheme but can get help for a support worker to assist with a wider range of tasks.¹¹⁴ Reported problems included unavailability of comprehensive published information about the types of help available and how to obtain it; lack of information about the appeals procedure and other rules of the scheme; and limited information in accessible media. Disparities in interpretation of the rules between PACTs have caused concern to users. ATW involves a high level of bureaucracy, which has been identified as a major contributory factor to delays; problems reported in the first year included inappropriate support assessments resulting in a repeat process of assessment and reordering, faulty equipment, and office inflexibility and under-staffing.¹¹⁵

The desire to keep a disability confidential and not disclose its nature to the employer can be an obstacle to taking up ATW help which requires co-funding from an employer. This problem already existed, notably for people with mental health problems, even when there was no charge to the employer.¹¹⁶ The SCPR evaluation of ATW one year after introduction, commissioned by ES, found that only a small minority of employees were concerned about disclosure.¹¹⁷

III.3.2 Disabled workers who benefit and those who miss out

PACT users

The PACT Clients' Survey (Beinart, 1997) indicates that the distribution of types of disability on DEAs' caseload is as follows:

- over half the sample have musculoskeletal conditions and 24% have back problems
- 15 per cent have mental health problems
- nine per cent report learning difficulties
- eight per cent are visually impaired
- eight per cent hearing impaired
- 29 per cent of clients have two or more conditions.

The proportions of clients reporting various types of disability are in line with previous data.

The proportion of newly disabled clients is low: ten per cent of clients have become newly disabled within the past two years.

Over half reported job loss because of ill health or disability: 54 per cent of respondents had left their last job for reasons related to health or disability.

Patterns of unemployment for caseload clients are as follows:

- half (48 per cent) had done no paid work in the two years before their assessment
- 31 per cent were unemployed for more than a year of that period
- ten per cent had not worked since 1988
- six per cent had never worked.

These figures show that PACTs work mainly with unemployed people as opposed to those already in a job. The exception is for clients who receive help for ATW who are overwhelmingly already in work.

In addition, 93 per cent of clients were white and 69 per cent were male. Three-quarters of this population were spread evenly across the age-group 25-54, with 16 per cent being under the age of 25 and eight per cent being 55 years of age or older.

PACT members receive limited disability training. Concern has been expressed that they rely too much on the medical model of disability when assessing individuals' needs.¹¹⁸

Access to Work

When compared with the previous arrangement of Special Employment Schemes, ATW reaches a much wider group of people, extending employment support to people with mental health difficulties and people with learning difficulties¹¹⁹ (the latter being more likely to use the scheme for access to employment). However, this requires good practice guidance for PACT members with no experience of working with these client groups.

It has been difficult for self-employed people to get support under ATW. PACTs have to assess business plans but there has been concern over whether they have the appropriate expertise.¹²⁰

There has been concern that people working in small companies will miss out through the introduction of employer charges in 1996.¹²¹

ATW helped 10,000 people in its first year. RNIB/RADAR (1995) estimated that an additional 3,000 disabled people could benefit, given an increase in the budget. The scheme is cash-limited and, if prioritisation is required, priority will be given to the unemployed before those who become disabled in work or whose disability becomes more severe: those whose job circumstances change or who seek a move to a new employer will have lowest priority.

More information about users of ATW is given in Part IV.

Users of disability-related provider organisations

Support varies greatly across disability and region. Moreover, some disabled workers are able to receive support from multiple sources while other disabled workers receive little support.

Coverage depends on the visibility of the disability and historically certain disabilities have received greater support than others from the UK establishment through royal patronage etc. For example, the needs of disabled workers with Asperger's Syndrome receive scant support from charities compared to other disabilities.

III.4 SUPPORT SERVICES FOR RETURN TO WORK

III.4.1 The main services for return to work

The main services which provide for return to work and job retention are described in III.2. Vocational training is described below.

Vocational training

Responsibility for the vocational training of disabled people in England lies with the Department for Education and Employment (DfEE) Training Enterprise and Education Directorate; Scottish and Welsh provision is the responsibility of the Scottish Office and Welsh Office respectively. There are no longer any government-owned training centres and all training is delivered through private or non-government training providers.

Mainstream provision

The DfEE contracts with around 75 Training and Enterprise Councils (TECs) in England. These are private companies which arrange for the provision of training in their geographical areas through local training providers. TECs (and LECs, or Local Enterprise Companies, in Scotland) arrange Training for Work (TfW) and Youth Training (YT), the government's main training programmes which are open to disabled people who can benefit from integrated provision.^a Disabled people do not have to satisfy the requirement to be unemployed for six months before joining TfW. The normal referral route for adults is through Jobcentres. In 1996-97 disabled people made up six per cent of participants in YT and 19 per cent of those in TfW¹²²; the latter proportion has grown from 11 per cent in 1993-94. No data are published on the employment history of participants in these schemes other than unemployment duration before entry. It is not possible to say how far they have served people who have become disabled while in work or in other circumstances. It is highly likely that YT participants are long-term disabled people.

Specialist training

People who are severely disabled may receive training which is funded centrally by DfEE and provided through either a small number of private residential training colleges or special local provision arranged by the TEC with extra funding from DfEE.

Residential training has long been available through central funding for people who would have difficulties participating in mainstream TfW. Colleges have constantly available support and medical care. They enable participants to gain occupational skills and vocational qualifications. The number of centrally funded colleges is declining (now around 13) with places for less than 1,000 trainees. Courses are mainly in traditional trades and crafts with the addition of commercial skills and computing. The majority of colleges are for people who are blind or deaf, and around a third provide training for people with all types of impairment.

Special local training was introduced in 1993 to cater for people who cannot consider residential training because of mobility or domestic reasons. As with residential training, this is based on a vocational programme offering a National Vocational Qualification (NVQ).

Applications for both forms of training are taken by PACT staff and passed to the local TEC for a decision on whether residential or special local training is most appropriate.

III.4.2 Integrating return to work services into work environments

Section III.2.6 discussed DEAs' links with employers.

Training may be provided on the job. We have no comprehensive information about how far this option is used in Training for Work. Agency providers make their own arrangements with employers. Some TECs offer financial incentives to employers to give work experience to or to employ trainees.

^a From April 1998 Training for Work will be known as Work Based Training for Adults and Youth Training as Work Based Training for Young People. Arrangements for disabled people to access these programmes will change. Their access to Work Based Training for Adults is likely to be severely restricted.

III.4.3 The types of enterprise providing return to work opportunities in co-operation with employment support and vocational rehabilitation services

The survey of outcomes of PACT clients six months after assessment¹²³ found that the main employers were small and medium enterprises: 40 per cent of former clients had found some employment in enterprises with less than 25 employees and 23 per cent were working in establishments with less than ten employees.

Table III.3: Size of establishment in post-assessment job

<i>N=164 PACT clients</i>	<i>started some new paid work as employee since assessment %</i>
fewer than 10 employees in establishment	23
10-19 employees	11
20-24 employees	3
can't say, but fewer than 25 employees	3
Can't say, but 25 or more employees	5
25-99	23
100-499	24
500-999	3
1,000 or more	1
can't say	4

Source: Beinart, 1997

III.5 USERS OF SUPPORT SERVICES FOR RETURN TO WORK

III.5.1 Mechanisms for identifying and accepting users who have left their employment

Users of PACT support services for return to work generally refer themselves, sometimes on the advice of frontline ES staff. Half had done no paid work in the previous two years.

III.5.2 Arrangements for user choice and user control of service packages

Employment services for disabled people have been criticised for the lack of accountability to their users, both individually and collectively, in service planning and delivery.¹²⁴ The concept of user involvement, now commonly applied in the planning and provision of health and social services at local level, has not yet touched state-controlled employment services. Despite the growth of contractual arrangements with independent agencies, contracting has not been used by Employment Services as a means to ensure that users' voices are heard in either the design or the evaluation of services. The National Disability Development Initiative (see III.6.1) is expected to have some influence in this area as there is a priority to increase choice and user control.

III.5.3 Disabled workers who benefit and those who miss out

The latest information about DEA caseloads provided in III.3.2 shows that people who have recently left employment are under-represented.

III.6 DESIGN AND DELIVERY OF EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

III.6.1 The effects of the distribution of responsibility for provision of services

The piecemeal and unco-ordinated nature of employment support and rehabilitation services, as described in III.1.1, makes it difficult for any one organisation to take overall responsibility. Clearly, some barriers to collaboration are caused by organisational separation between agencies responsible to different Government departments. Despite widespread agreement on overall aims and objectives, these are often translated into more narrow operational objectives; financial and procedural requirements can lead to boundary disputes.¹²⁵ It was noted in III.1.1 that NHS rehabilitation does not normally extend to employment rehabilitation, while ES rehabilitation services only fund help for individuals almost ready to (re-)enter the labour market; clearly, there is a major gap in provision.

At local level, strategic collaboration between social services authorities and the NHS in the implementation of community care does not normally extend across to employment, training and further education, with collaboration operating between agencies on an *ad hoc* basis only.¹²⁶ The Sub-group on the Co-ordination of Rehabilitation Services for People with Disabilities recommends that all relevant agencies including those in the fields of employment and training should be included in arrangements for joint planning, commissioning and purchasing of services.¹²⁷

Decentralisation of state services

The establishment of PACTs and TECs in the early 1990s was part of the then government's strategy of decreasing rigid central control over agency functions. Consequently, TECs and PACTs have considerable flexibility in the implementation of services. Flexibility can promote innovation and imagination in meeting needs but can also lead to confusion among users about the type and standard of service to expect. In the case of PACTs, there have been calls for a code of practice which sets out the standard of support which users can expect.¹²⁸

Proliferation of providers

There are a large number of service-providing charities and non-profit associations which tend to be sited near policy-makers and sponsors in the South-East of England and in regional centres in Wales, Scotland and Northern Ireland. Historically, each charity has sought to establish its own clientele, and a multitude of independent impairment-specific service-providing bodies continue to promote the cause of their constituents with little co-ordination of effort; many, for example, have published and distributed nearly identical information to disabled people and employers on the provisions of the DDA.

The introduction of the market into employment-related services has increased the number of small, localised and specialist providers receiving funding from a wide range of statutory agencies. According to the report of the Sub-group on the Co-ordination of Rehabilitation Services for People with Disabilities¹²⁹ their perspective can be summarised as 'a shifting kaleidoscope of relationships and a constant opportunistic search for funding and long-term support' and a lack of long-term 'core' funding can mean funding-led service development with problems in building pilot initiatives into long-term programmes. The Sub-group notes that services with a wider national or regional catchment area secure funding from a wide range of agencies for programmes for individuals, some working with up to 50 different agencies.

National Disability Development Initiative

The National Disability Development Initiative (NDDI) has been introduced to support a co-ordinated and national approach to service and product development for the clients of the ES DS at the national, regional and local levels. The NDDI pilot programme will be used to support developmental activities to enhance and/or extend services and products to disabled people and employers. Once successful pilots have been identified at a regional level they can be developed nationally.

The priority areas for development within the NDDI are: identification of client need in relation to the labour market; DS employment assessment and related counselling for new and retained jobs; and employment rehabilitation, now called work preparation.

The key aim of the NDDI is to foster partnerships between ES regional disability services and other stakeholders to improve services to disabled people and employers and to increase employment and retention opportunities for disabled people. NDDI arose from a recent review within the ES DS, which recommended a more co-ordinated national approach to service and product development. Previously, development projects had been insufficiently focused on effective roll-out and eventual dissemination and adoption. This national approach is aimed to promote the most efficient and effective use of resources and the active adoption of good practice.

The NDDI aims to provide models for significant changes to ES DS nationally which will improve effectiveness, relevance and value for money within available resources. It will sponsor individual projects which:

- are innovative
- focus on priority development areas
- improve the quality of services to disabled people and employers
- improve value for money within available resources
- increase the involvement and empowerment of disabled people
- provide models with potential for national replication
- involve partnerships between ES and external organisations
- foster better links between ES DS and key stakeholders: for example, service providers, employers and disabled people.

An announcement on the projects selected for funding following a competitive bidding process was expected in February 1998.

III.6.2 The effect of relationships between services on their effectiveness

We have already commented on inadequate links between medical rehabilitation within the National Health Service and Disability Services. The concentration of employment support and vocational rehabilitation within Disability Services enables case management by DEAs but DS clients are mainly those who require no further medical rehabilitation. (See also III.6.1.)

The charity *Employment Opportunities for People with Disabilities* is currently developing a database of past clients in order to provide a set of profiles of services offered, employment sector and type, and continuing employment needs of successful and unsuccessful employment placements over the past three years. This database is being funded in part by the *Select Appointments* employment agency and demonstrates a small but useful relationship developing between agencies in developing case-mix scenarios for future consultation. For example, the profile of new clients can be matched to a case profile in which different support services are relevant and different employment or job retention strategies are pursued.

III.6.3 The results of vocational training and rehabilitation

Research commissioned by government has tended to concentrate on specific employment services and programmes, such as Access to Work, Supported Employment or Training and Enterprise Councils, rather than on the overall picture. Consequently, research offers a series of snap-shots of provision at single points in the process of (re-)gaining employment.

Independent research has been generally critical of the effectiveness of state-provided employment services, both mainstream and specialist. Criticisms drawn from users' experiences include undervaluing of users' employment potential and lack of responsiveness to user preferences.¹³⁰

Effectiveness of mainstream Employment Services

Users' views of specific programmes are regularly sought by government commissioned programme evaluations but research which examines their overall experience of state employment support services is uncommon. Qualitative research commissioned by ES in mid-1997 is seeking the views and preferences of disabled jobseekers (as defined by the DDA) about ES provision. Independent research into the satisfaction of disabled people with mainstream and specialist ES services was carried out in 1993 in one English county (local authority); it found levels of dissatisfaction of 47 per cent and 41 per cent respectively among 244 respondents with experience of 'mainstream' and 'specialist' placing and advice services.¹³¹

Effectiveness of PACT assistance

Research into the outcomes for PACT clients six months after assessment showed that the proportion in paid work had increased from 18 per cent at assessment to 26 per cent, and that 18 per cent were attending either a training course or a rehabilitation programme. However, nearly two fifths were not in work or training and were looking for work, and a further fifth who were not in work or training were not looking for work, mainly for health-related reasons.¹³²

Effectiveness of the Employment Rehabilitation Programme

Government-commissioned research conducted in the early stages of the new arrangements for provision of rehabilitation through local agencies involved interviews with staff from five PACTs, interviews with 14 clients (three per client) and case studies of ten agencies.¹³³ A number of changes have been implemented since then and new guidance issued. The research report from the Policy Studies Institute drew attention, *inter alia*, to a lack of local agency provision, lack of suitable specialist equipment with delays in lending systems organised by PACTs or TECs, funding on a 'cost for head' basis which did not provide the resources for agencies to invest in improved environment, facilities and services, and the threats to the viability of smaller specialist agencies when sufficient referrals were not forthcoming. The authors were concerned about guidance recommending that placement outcomes for clients should form the main measure of agents' effectiveness. At the time, most action plans failed to specify client needs and the long-term goals of rehabilitation or its more specific objectives. Clients were subject to long waiting times throughout the rehabilitation process and most clients were not supported by their DEAs in the three months after finishing rehabilitation.

Effectiveness of mainstream training provision^a

TEC boards have a contractual obligation to ensure equality of opportunity in respect of all TEC activities. The TEC operating agreement requires each TEC to set out and implement an equal opportunities strategy, including a statement, a plan and evaluating arrangements. TECs are obliged to make clear in their corporate and business plans how they intend to meet the requirements of all people in their area, including those with special training needs. 'Special needs' are defined as 'needs which arise from any personal disadvantage which significantly impairs the individual's ability to participate successfully in Training for Work'(TfW).¹³⁴ Special needs groups are categorised in national statistics as 'people with disabilities', people with 'literacy/numeracy needs', and speakers of languages other than English, Welsh or Gaelic.

Published outcome data show proportions of disabled people (and other categories) having completed the Training for Work programme, gaining qualifications and in a job. There is a clear performance gap, using these measures, in outcomes for disabled people and mainstream trainees. Concern has been expressed about the deleterious impact on provision for disabled people of the shift in funding towards an emphasis on job outcomes and away from qualification outcomes (see below). There is a danger of TfW becoming a job-placement programme rather than a training programme *per se*.¹³⁵

Research conducted by the Institute of Employment Studies (IES) in early autumn 1995¹³⁶ identified several problems in assisting people with special training needs through the mainstream TEC provisions described above. The account here concentrates on findings relating to TfW as it is of most relevance to return to work. General problems with TfW which adversely affect disabled people include major falls in training starts between 1994/95 and 1995/96. Reduced levels of contracting and recruitment to the programme were due to delays and confusion associated with the new 'starts and outcomes' funding regime (rather than the previous focus on training weeks and outcomes). Providers were both more cautious about recruitment *per se*, and more selective about the recruits they would take'. In addition, new procedures relating to referrals from and 'endorsements' of trainees by the ES greatly slowed down the process of eligibility approval and reduced the number of referrals.¹³⁷ The 'creaming' effect, whereby providers reject potential trainees seen as having a high likelihood of dropping out,

^a Significant changes in the structure and delivery of training were announced in January 1998.

was said to be 'clearly at the expense of some of the most disadvantaged and lowest achieving groups in the Tfw-eligible population'.¹³⁸ There are major variations between TEC areas in the proportions of trainees in disadvantaged groups: these variations do not reflect underlying population differences and imply either considerable variation in underlying provision for these groups or significant variations in endorsement procedures. It seems that many people with disabilities were, at the time of the 1995 study reported here, classified as 'mainstream' trainees or were not entering the Tfw programme at all.

However, TECs do have discretion to vary the terms of their Tfw contracts with providers. The 1995 IES research found that just under half the TECs surveyed did so, typically in order to provide some degree of protection of provision for disadvantaged groups through higher start prices, higher prices per outcome point (and/or recognition of different outcomes) and lower rates of outcome-related funding. A 1996 report, commissioned by DfEE, on the effectiveness of TECs in achieving jobs and qualifications for disadvantaged groups noted one TEC which rewarded training providers for job outcomes for disadvantaged YT clients but not for mainstream YT participants.¹³⁹

The 1995 IES survey also found significant changes in the balance between training providers for Tfw contracted to TECs, with a major concentration of provision on fewer providers in 1995/96 as compared with 1994/95. This reflected a tightening of TECs' performance standards, with providers failing the more intensive outcome targets associated with tighter funding, and reductions in volume and action by some TECs to achieve economies of scale by reducing the number of suppliers or to reduce administrative burdens by subcontracting. However, TECs pursued quite different strategies within the reduced provider base: some were supporting specialist special training needs providers, while others had decided to integrate specialist provision into the mainstream. Rolfe *et al.* (1996), reporting on the DfEE commissioned study, caution that people with special needs may miss out in the move towards integrated provision in the face of increasing selectivity by providers and the lack of resources for special aids and expertise. This study also identified examples of good practice to close the gap in performance between disadvantaged and mainstream trainees. TECs have considerable flexibility to experiment with new approaches. In addition, the study identified sub-groups of disabled people who experience the most serious difficulties, notably the large group of people with learning difficulties. This group includes people with low levels of literacy and numeracy and sometimes with emotional and behavioural difficulties. Pre-vocational training was regarded by TECs as essential to the successful vocational training of disadvantaged groups, although this was a major casualty of funding cutbacks.

III.6.4 Arrangements for outcome-related funding and financial incentives to service staff

TEC funding arrangements with the government for Tfw are based on the achievement of starts and outcomes, with 25 per cent of the funding for starts and 75 per cent for outcomes. Outcomes attracting funding are the achievement of jobs and qualifications, depending on the level achieved.

As III.6.3 makes clear, the arrangements between TECs and providers for outcome-related funding have had a significant effect on access to Tfw for disabled people with special training needs, principally because of the 'creaming' effect on providers' acceptance practices, although TECs can introduce variations to protect disadvantaged groups. The study by Rolfe *et al.* (1996) found that the additional funding given to providers for achievements by disadvantaged trainees, intended to cover additional costs and to recognise the additional effort

required, were not sufficient to counter increasingly widespread selectivity. A major negative influence on provision for special needs groups emphasised in both the 1995 IES study and Rolfe *et al.* (1996) was the shifting balance of outcome targets (especially in TfW) from qualifications to employment outcomes; these were seen as an unfair indicator of scheme performance for these groups and as a major pressure for 'creaming'.

As far as we know there are no performance-related incentives for individual staff members.

III.6.5 Most significant factors in facilitating or impeding overall success

Job retention and return to work schemes are impeded by the piecemeal approach, with an almost total absence of a co-ordinated vocational rehabilitation approach.

In relation to return to work, the lack of awareness of employment support and rehabilitation services is a major impediment, which particularly affects those who have left the labour market. A survey of Invalidation Benefit recipients, commissioned by the Department of Social Security in 1993, found that there was low awareness and experience of government assistance amongst people who were interviewed in the months after receiving benefits (see Table III.4).

Table III.4: Invalidity Benefit recipients' awareness and experience of government schemes and assistance (in 1993)

<i>N=1530</i>	<i>Heard of %</i>	<i>Experience of %</i>
<i>Scheme</i>		
Assistance with Fares to Work (FTW)	13	-
Personal Reader Service (PRS)	16	-
Special Aids for Employment (SAE)	10	-
Adaptations to Premises or Equipment (APE)	12	1
Working at home with technology	11	-
Job Introduction Scheme (JIS)	16	-
Enterprise Support (ES)	40	2
Business on own account	5	-
Employment Rehabilitation Scheme	35	3
Disablement Resettlement Officer (DRO)	22	4
None of these	36	90

Note: columns may add up to more than 100 per cent as more than one response is permitted.

Source: Erens and Ghate, 1993.

III.7 LINKS WITH EMPLOYMENT POLICIES

III.7.1 The effects of employment policy obligations and agreements on opportunities for vocational rehabilitation

The DDA creates an opportunity for the development of an effective rehabilitation programme. It may be that the Government announcement, in June 1997, that programmes to help disabled people obtain employment will receive £195 million over the next five years will have such an effect. However, it appears that these will be initially focused more on those disabled people seeking employment rather than those looking for support for retention, although preventing people who become disabled from leaving employment has been identified as an objective of the programme.

The DDA, however, applies to employers of 20 or more (although this is now under review). Insofar as they exist, voluntary actions to support rehabilitation in the workplace, arising out of 'equal opportunities' or 'diversity' policies, apply in large firms.

III.7.2 The effects of financial incentives to employers on opportunities for vocational rehabilitation in the workplace

There are few financial incentives to employers relating to employment of disabled people other than the Access to Work programme and the little-used Job Introduction Scheme. The few incentives that exist via TECs do not appear to be directed towards job retention.

III.7.3 The relative priorities given to disabled people and other client groups

The current first priority for the Government with respect to employment support services resides with young or long-term unemployed people (more than two years). They will be the principal beneficiaries of the Welfare to Work programme. In addition to this, programmes supporting single parents and disabled people will receive around £200 million each over the next five years. It is noteworthy, however, that disabled people have been identified as a major recipient group within Welfare to Work.

III.7.4 Effects of changes in labour market structure and demand on opportunities for rehabilitation in the workplace

Services do not appear to be geared to meeting the needs of part-time workers or those in casual jobs. Given the streamlining of many businesses, notably in the service sector, employers are more likely to favour services which support 'valued' employees whom they hope to retain.

III.7.5 Other links between employment policies and opportunities for vocational rehabilitation

During the years of Conservative government, job creation was never a priority. The new Labour government's scope to increase demand for labour is limited by its commitment to restrict public expenditure. Without the creation of jobs, improvements in rehabilitation are unlikely to lead to increased employment opportunities.

III.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

III.8.1 The relationship between funding of benefit and compensation programmes and vocational rehabilitation policies and services

The Benefits Agency and the Employment Service are funded separately, from different departmental budgets. However, recently there has been some co-ordination between the two in respect of funding of extra staff resources in ES and the BA Medical Agency to deal with the presumed outflow from Invalidity Benefit to job-seeker status.

The close relationship between medically-based rehabilitation services and the benefits system, and the lack of relationship between medical rehabilitation and the employment services, means that there is often a one-way

passage for newly disabled people to become dependent on benefits. Once supported in the benefits system, because of the nature of the support provided to disabled people, a trap is created from which it is very difficult for disabled people to escape.

III.8.2 The effects of benefit or compensation regulations on opportunities for vocational rehabilitation

Historically, disabled people on incapacity benefits (IB) had limited opportunity to participate in retraining programmes. The benefits system has been identified as an obstacle to participation in Training for Work. People who are claiming IB and SDA are eligible. (A training allowance at £10 higher than usual benefit is payable.) As participation in the scheme can be taken as proof of capability to work, the chief problem is that ability to reclaim IB or SDA may be affected by the successful completion of a training course.¹⁴⁰

Those attending an employment rehabilitation course may choose to receive an allowance or to remain on existing incapacity benefits (IB or SDA). Those opting for an allowance can return to their former incapacity benefit at the end of the course, providing the claim is made within eight weeks. Attending the course should not be regarded as proof of capacity for work.

There is little incentive for the PACTs to work with people receiving incapacity benefits. It is difficult for these people seeking work experience to take advantage of Access to Work.

III.8.3 The co-ordination of the assessment of eligibility for disability benefits and vocational rehabilitation services

There is a concern that, as many disabled people receiving disability benefits are clients of the Benefits Agency, not the Employment Service, they are less likely to be referred to TFW.¹⁴¹ Although there is a linked computer system between Employment Service Jobcentres and the Benefits Agency, this seems to be used for claim management purposes only.

In addition, it is clear that former recipients of Invalidity Benefit (IB) are not using Employment Service provision at the expected level. Extra resources were allocated to the Employment Service to help ex-recipients of invalidity and incapacity benefits into work following the reforms of 1995. Around two-fifths of ex-recipients were expected to make use of mainstream job finding programmes (Jobplan, Jobclub and Job Introduction Guarantee) but in 1995-96 less than 500 started on each of the three main programmes. Of the 40,000 expected to receive PACT support, under a quarter underwent PACT assessment.¹⁴² Numbers recorded as entering work were low; in 1995-96, rather over 1,000 started work with mainstream ES help and a rather larger number with PACT help.

Ex-recipients are likely to be out of touch with the current labour market and may find it hard to identify what they might want from employment finding services.¹⁴³ Co-ordination between benefit agency and employment staff in benefit eligibility decisions has been advocated, as has early in-depth exploration of ex-IB Jobseekers' employment goals and job search needs. Ex-IB jobseekers require support in identifying their work competencies rather than their incapacity for work. DEAs and other counsellors require an understanding of the work

environment in order to be able to advise and place ex-IB jobseekers and the Work Targeted Interview is seen as a useful tool.¹⁴⁴

It has been argued that investment by itself will not help much without tackling the problem of co-ordination between agencies at the point of benefit eligibility decision.¹⁴⁵

III.8.4 Arrangements to combine the receipt of benefits with rehabilitation in the workplace

As noted in Part II, a subsidiary aim of the Disability Working Allowance (DWA) is to achieve rehabilitative objectives, in the sense that the DWA supplements income for those who are only able to work less than full-time. In theory, recipients may increase their hours of work with a supplement from DWA, and so gradually adjust to working with a disability. As DWA is a social security benefit, claimed independently by the individual from the Benefits Agency, there is little likelihood of either the employer or the Employment Service Disability Service intervening to co-operate with the individual to plan other components to rehabilitation at work.

Private occupational health plans have their own arrangements.

III.9 LINKS WITH BENEFITS AND EMPLOYMENT POLICIES

III.9.1 The relationship between policies for vocational rehabilitation, benefits and employment

The relationship between rehabilitation, employment and benefit systems seems to direct people who become more disabled towards becoming dependent upon benefits, because of the lack of relationship between vocational rehabilitation services and employment opportunities.

III.10 The most relevant factors influencing the integration of personal support and rehabilitation services into the workplace

The most relevant factor influencing personal support and rehabilitation services is the general ignorance amongst employers and disabled people alike about what is currently available. This is compounded by the complexity of current arrangements.

ENDNOTES

- ⁹⁴ Fletcher, 1996.
- ⁹⁵ Ibid.
- ⁹⁶ IDGD, 1996.
- ⁹⁷ Cited in Finn, 1992.
- ⁹⁸ Paschkes-Bell, 1996.
- ⁹⁹ IDGD, 1996.
- ¹⁰⁰ Finn, 1992.
- ¹⁰¹ Lonsdale, 1985.
- ¹⁰² ECOTEC Employment Support Unit, personal communication.
- ¹⁰³ Telephone interview with the Editor of Occupational Health Review, Dr John Ballard, 23/10/97.
- ¹⁰⁴ Beinart *et al.*, 1996.
- ¹⁰⁵ Ibid.
- ¹⁰⁶ Interview with Susan Scott-Parker, Employers' Forum on Disability.
- ¹⁰⁷ Brian McGinnis, MENCAP, personal communication.
- ¹⁰⁸ Corden and Thornton, 1997.
- ¹⁰⁹ Interview with Susan Scott-Parker, Employers' Forum on Disability.
- ¹¹⁰ Ibid.
- ¹¹¹ Beinart, 1997.
- ¹¹² RNIB/RADAR, 1995, p. 13.
- ¹¹³ Kerrigan, 1996.
- ¹¹⁴ RNIB/RADAR, 1995, p. 11.
- ¹¹⁵ RNIB/RADAR, 1995, p. 25.
- ¹¹⁶ RNIB/RADAR, 1995, p. 35.
- ¹¹⁷ Beinart *et al.*, 1996.
- ¹¹⁸ RNIB/RADAR, 1995, p. 18.
- ¹¹⁹ Ibid.
- ¹²⁰ RNIB/RADAR, 1995, p. 36.
- ¹²¹ Kerrigan, 1996.
- ¹²² Information provided by the Department for Education and Employment, Employment and Training Programmes.
- ¹²³ Beinart, 1997.

- ¹²⁴ Hyde, 1996.
- ¹²⁵ IDGD, 1996.
- ¹²⁶ Ibid.
- ¹²⁷ Ibid.
- ¹²⁸ RNIB/RADAR, 1995.
- ¹²⁹ IDGD, 1996.
- ¹³⁰ Hyde, 1996.
- ¹³¹ Ibid.
- ¹³² Beinart, 1997.
- ¹³³ Lakey and Simpkins, 1994.
- ¹³⁴ Department of Employment, undated.
- ¹³⁵ Meager, 1995.
- ¹³⁶ Ibid.
- ¹³⁷ Ibid, p.10.
- ¹³⁸ Ibid.
- ¹³⁹ Rolfe *et al.*, 1996.
- ¹⁴⁰ RADAR Employment Factsheet 4 'Training for Disabled People', undated.
- ¹⁴¹ Ibid.
- ¹⁴² *Hansard*, cols 171-3, 26/11/96; cols 78-9, 29/10/96.
- ¹⁴³ Birkin and Meehan, 1997.
- ¹⁴⁴ Ibid.
- ¹⁴⁵ Thornton *et al.*, 1997.

IV. ADAPTATION OF WORK AND WORKPLACE

Part IV is concerned with practical solutions to adapting the work-station, workplace and job procedures to the needs of workers who become disabled. It focuses on external services available to enterprises to assist them in making adjustments, whether those services are accessed directly in the marketplace or via agencies. External services may provide advice or practical help both in adjusting the demands of the job and in adapting the work environment, temporarily or permanently. They may operate as private consultancies, voluntary bodies, quasi-governmental agencies, or as part of employment services.

The initial sections of this Part consider policy responsibilities, details of providers, funders and users, technical advisory services, sources of technical equipment and advice about accommodating work routines. Later sections focus on the factors which affect the success of adaptation services in promoting job retention and return to work.

IV.1 RESPONSIBILITY FOR POLICY AND PROVISION

IV.1.1 The main bodies responsible for work environment policies and their role in promoting adaptations for job retention and return to work

The main body responsible for work environment policies for disabled people is the Employment Service (ES) Disability Service. As described in Part III, Disability Services provide a range of services to disabled people and employers including specialist assessment, contract management, development and improvement of services within the region. Placement Assessment and Counselling Teams (PACTs) are located within the nine Regional Disability Services.

The main state supported programme which promotes adaptations for job retention and return to work is the Access to Work scheme.

There is no close relationship, in any practical sense, between the Employment Service Disability Services and benefits or compensation programmes.

IV.1.2 Comparison of the attention given to policies which promote job retention and those which promote access to work

The DDA imposes a duty on employers to make reasonable adjustments to accommodate the needs of disabled people, as elaborated in the Employment Code of Practice. With respect to a newly disabled employee, this would require the employer to consider transferring them to fill an existing vacancy; altering their working hours; assigning them to a different place of work; allowing them to be absent during working hours for rehabilitation, assessment or treatment; giving them additional training if required; providing a reader or interpreter; and providing supervision. These factors are in addition to the duty to make adjustments to premises or modify equipment. The DDA may well have the effect of favouring adjustments to work and workplace for job retention but, to date, there is insufficient evidence. There is considerable policy interest in employers' practices in

accommodating work and workplace, as evidenced by a series of surveys on recruitment and retention of disabled people which have asked, *inter alia*, about attitudes to and practice in making adjustments.

By far the most significant state programme for adaptation of work and workplace is Access to Work (ATW - see I.2.3). ATW assistance is given on demand, subject to applicants meeting the definition of a disabled person (as in the DDA) and subject to the overall budget, currently £19m. The original aim of ATW was to increase the number of disabled people in work: 50 per cent of entrants to ATW were intended to be unemployed people. However, a survey commissioned by government from Social and Community Planning Research (SCPR)¹⁴⁶ in 1995, one year after introduction, found 92 per cent already in work when they applied but the survey did not ask how long they had been in work. In December 1995, a further emphasis was placed on helping unemployed people into work rather than retaining people who became disabled: the proportion was set at 42 per cent for unemployed beneficiaries, 52 per cent for employed people and six per cent for the self-employed.

IV.1.3 The main providers of technical and advisory services

The main providers of technical and advisory services are:

- Disability Employment Advisers (see III.2.1)
- PACTs (III.2.1)
- Local Occupational Psychology Services (III.2.1)
- Large single impairment charities like The Royal National Institute for Deaf People and The Royal National Institute for the Blind
- Multiple impairment charities like The Computability Centre or Foundation of Communication Aids for Disabled People
- Commercial agencies providing technical support and advisory services
- Ability Development Centres.

PACTs and DEAs can support the costs of equipment using the Access to Work scheme. They can also provide access to training to update and gain new skills. In addition they advise employers on implementing the Disability Symbol commitments (I.1.3), one of which is to retain people who become disabled. Through contacts with employers in order to place disabled people in jobs, DEAs will generally encourage employers to consider adaptations of work and workplace for both new and existing disabled workers.

For disabled people who face greater difficulties in the labour market the services of Local Occupational Psychology Services (LOPS) may be used to deliver employment assessment and counselling. Occupational Psychologist Assessment Services may cover analysis and diagnosis including ergonomic assessment and solution planning.

If the advisory service is not delivered by Disability Employment Advisers or PACTs then it is contracted out to other providers. In the SCPR Access to Work survey, which was carried out one year after the introduction of ATW, 93 per cent of DEAs had used an ES Technical Consultant in at least one of the ATW applications they had dealt with and 86 per cent had used one in half or more of the cases. Although a majority of DEAs (80 per cent) had used external consultants, about six in ten had used them in less than a quarter of their ATW cases. There is, however, a trend to contracting out and encouragement to do so within the ethos of Employment

Services. The survey found that over half the DEAs reported problems using consultants, less so with external consultants. The problems were mainly with making contact and delays in receiving reports.

The nine regional Ability Development Centres (ADCs) within Disability Service regions (see III.2.1) are intended to identify suitable equipment to help clients in their work, and to provide design and production service for adapting existing equipment or making 'one-off' items of low tech equipment.¹⁴⁷ Information is not available on the quantity of such services provided by ADCs.

IV.1.4 The relationship between providers of technical and advisory services and providers of employment support and rehabilitation services

As noted, PACTs and DEAs also arrange employment support and rehabilitation services. The providers of technical and advisory services may be the same people as those who are providing employment support and rehabilitation services. However, if additional help is required then the services of Local Occupational Psychology Services may be required or the Employment Service Disability Service may contract with an external provider.

The range of charities and non-profit associations which provide information and services tends to cause confusion for disabled workers accessing support and work adaptations, with overlap in services and needless duplication. Many of these small service providers are not technically competent to extend their services to the provision of adaptations. The Computability Centre (TCC), a national charity, notes overlap and confusion in this area and now seeks to co-ordinate its service with the many other providers who give technical assistance in the use of computers and communication devices.¹⁴⁸ Historically, though, the many small agencies have tended to control small territories in disability service provision and are tempted to extend services to the new technical apparatus now available.

IV.2 TECHNICAL AND ADVISORY SERVICES FOR MODIFICATIONS TO WORK-STATION AND WORK-PLACE

IV.2.1 Technical and advisory services available to enterprises in respect of modifications

Government agencies

As noted, the principal agency responsible for advising in this area is the Employment Service Disability Services, through the Disability Employment Advisers and PACTs.

The Department for Education and Employment (DfEE) and its agency ES encourage employers to consider adjustments through promotional material, emphasising that modifications to the work-station or workplace are often not costly (drawing on evidence from the USA). To meet employers' needs for information on appropriate adjustments and their costs, DfEE and ES commissioned a study of adjustments made for disabled applicants or employees by a sample of employers, to be published in Spring 1998 as 40 case studies.

Consultancies

There is a range of consultancies (some run by disabled people) who sell their services to employers in advising them how to make reasonable adjustments that comply with the new requirements of the DDA.

Employers' organisations

A number of employers' organisations have produced publications for their members about the implications of making reasonable adjustments under the DDA. It is rare for them to provide specific information about particular technical alterations that may be required. However, some have produced videos and others have produced documentation. They include the British Banking Association, the Engineering Employers' Federation, the Electricity Association, the Confederation of British Industry and the Cinema Exhibitors' Association. The Employers' Forum on Disability is producing a series of factsheets on adjustments for people with specific impairments (for example, people who are blind or Deaf).

Disability organisations

In the main it is the larger impairment-specific disability organisations that will advise on technical modifications to the work-station or workplace. In addition, some new multi-impairment disability organisations like The Computability Centre provide similar advice for a pan-disability group.

The National Health Service

Health service providers primarily advise the individual on personal mobility or other impairment needs. However, some, like the Mary Marlborough Centre in Oxford and the Disabled Living Foundation in London, which also have some research activity, provide advice on implementing modifications to the workplace.

Trades unions

A number of trades unions have also produced position papers on the need to make reasonable adjustment under the DDA but do not go as far as providing technical or advisory services.

IV.2.2 Services specifically directed towards job retention

All services are directed towards both retention of employees who become disabled and accommodating disabled people entering a job. RNIB has a more particular interest in services for job retention, given the numbers who develop visual impairment while in employment. As noted below, the problem is not so much the supply of or demand for advisory services, but the limited mechanisms to enable employers to know about and use any available services.

Private insurers may be more willing to focus on job retention adaptations and services where such activity reduces their responsibility or culpability under Health and Safety legislation and/or avoids their paying out personal health insurance compensation.

IV.2.3 The availability of technical and advisory services and their use by enterprises

A broad array of technical and advisory services is available. The principal co-ordinating body behind this is the Employment Service Disability Services. However, there is a burgeoning industry of technical advisers which

has the potential for creating some confusion amongst enterprises. There is little doubt that, over a period of time, market forces will influence this situation in enabling the more effective and efficient advisers to flourish while the number of less efficient organisations, that provide inappropriate or inadequate help and technical support, will diminish.

Anecdotal evidence would suggest that there is a far greater take-up of services within service industries. It also appears that larger employer are more likely to use the services.

The DDA appears to be increasing the demand for advice and consultancy. The Computability Centre, a resource for disabled individuals, educators, the health sector and voluntary organisations as well as for employers, reported a 40 per cent increase in calls to its freephone helpline in the last four months of 1996; however, employers and employees made only 17 per cent of the 5,700 calls in 1996.¹⁴⁹

IV.2.4 Factors which encourage or discourage the use of technical and advisory services

The major factor which influences the use of technical advisory services is the lack of awareness and ignorance about the information available. Employers in the main are also ignorant of the fact the Government funding is available to change work-stations or workplace environments, via the Access to Work programme. Whether the introduction in 1996 of employer charges for ATW discourages the use of advisory services is currently being researched as part of a survey commissioned by ES.

The DDA has obviously promoted an increased awareness of the need for employers to make reasonable adjustments, but it is as yet unclear whether or not they are familiar with the availability of these services and the Government funding to support their endeavours to retain people who become disabled.

Historically, the role of the DEAs has not been held in very high esteem in the ES. Attempts have been made to change this but there is still some historic impact which undermines the value of this position: this means that it may be less likely to attract highly motivated, dynamic staff. As noted in Part III, employers are thought to have little regard for vocational rehabilitation providers (including those who advise on technical help) who appear unfamiliar with enterprise needs and methods of working.

IV.3 TECHNICAL EQUIPMENT

IV.3.1 The provision and funding of equipment to meet individual needs

Table III.1 showed that 'Special aids and equipment' accounted for 82 per cent of support provided under the ATW programme (Beinart et al., 1996). Within this category, just under half (43 per cent) were posture aids: of those 80 per cent were ergonomic chairs; 26 per cent footstools or footrests; and 17 per cent adjustable writing slopes. The next largest sub-category was visual aids: 85 per cent were computer equipment or software such as scanners, CCTV and speech synthesisers. Other computer equipment and software (mainly standard keyboards, monitors and printers) accounted for 20 per cent. Aids for hearing difficulties amounted to 20 per cent of aids: 35 per cent were Minicomms and text telephones; and 26 per cent telephone amplifiers and volume controls. Just eight per cent were mobility aids, mostly wheelchairs. Adaptations to premises and equipment

accounted for seven per cent of the overall assistance, including the installation of ramps, accessible toilets and adaptations to existing office chairs and desks.

As in the ATW scheme as a whole, if the disabled person is already employed the scheme will meet up to 80% of costs relating to specialist equipment over £300 for the first year and 100 per cent of any costs in subsequent years. If the cost of equipment exceeds £10,000 over a three-year period the scheme will meet the whole cost. It is likely that most of the provision of technical equipment was 'one-off'. It appears that there is no budgetary ceiling for any of the sub-categories of assistance. An individual disabled person can have up to £21,000 spent to meet his or her assessed needs over a five-year period.

We have no detailed information about provision by charities outside the state-run programme.

Manufacturers

Manufacturers are rapidly increasing in number in response to the DDA. There is now a large range of products and services available to help enterprises make technical adjustments to their workplace. The delivery of these services is completely unregulated and if there is no external advice for the enterprise then they are vulnerable to purchasing equipment that is not the ideal solution for the disabled individual. Every year there is a national exhibition for manufacturers (NAIDEX) which usually attracts 80,000 to 100,000 visitors.

A 1994 market report on equipment for disabled people¹⁵⁰ valued the total market for aids and equipment at an estimated £950m, with the National Health Service (NHS) accounting for around 60% of this total. Although the overall market is very large, many of the market sectors are quite small measured in volume terms, because of the individual nature of disabilities. The fragmented structure of the industry has consequently evolved with many low-volume producers, competing in all the sectors of demand. The report stressed the need for the supplier industry to consolidate into larger units, as many of the firms are too small to be able to invest in the next phase of technical developments.

There are also likely to be radical changes in the supply industry, with amalgamations and rationalisation of manufacturing bringing more efficient production and possibly lower prices. This would help to reduce the funding gap so that more people would be able to benefit from the latest technology.

IV.3.2 Comparison of the availability and use of provision to support job retention and provision to support access to work

ATW overwhelmingly favours disabled people already in work: in the SCPR survey (Beinart *et al.*, 1996) the majority of users (85 per cent) were already in paid work when requesting ATW. The survey found that about a quarter of recipients had developed a disability which affected their work in the last three years, while about a fifth had been having work problems for over 20 years. A fifth of survey respondents said they would not still be in the job without ATW help. There have been reported difficulties for unemployed disabled people in accessing provision.

ATW support is provided after assessment in response to demand from a disabled person or, less usually, the employer of a disabled person. There is no right to receive the aid requested. In a minority of cases reported in the SCPR survey the provision resulted from the suggestion of a DEA.

IV.3.3 The balance between provision to the disabled person and to the enterprise

Access to Work was designed around the individual disabled person. If alterations are required to the built environment or work-station of the disabled person then this is dependent upon the employer employing a disabled person in the first place. If the disabled person has been provided with technical equipment to remain in employment and then chooses to move to another enterprise, they are at liberty to do so and the equipment will follow them. If, however, the Access to Work Scheme has been used to invest in the infrastructure of the built environment, then obviously this will not be removed if the disabled person moves elsewhere.

Changes to the rules in 1996 mean that grants may now be made to the employer or to the disabled person. The effects of this are being researched.

IV.3.4 The adequacy of provision

The £19 million which is available for the Access to Work scheme as a whole (in 1996-97) is not adequate to meet demand, although the budget was increased from the previous £12.9 million. However, there are indications from the Minister for Employment that, with the DDA, there will be an increasing expectation that enterprises should pay for the adaptations necessary for disabled people to be retained in employment. This situation would be untenable if disabled people did not have their rights protected by law. However, it is inevitable that the proportion of state funding is likely to reduce and enterprises will be increasingly expected to fund workplace adaptations.

IV.3.5 Factors which encourage or discourage take-up by employees and by enterprises

The major factors which influence the take-up of financial support are the lack of awareness and the limited information which is available about the scheme. In addition, the administrative process can sometimes be quite cumbersome and lengthy, resulting in employers choosing to fund the adjustment themselves rather than wait for the time involved for the Employment Service to agree the funding package that may be required.

As noted, special aids and equipment seem to be the most popular aspect of the ATW scheme. Use of help for adaptations to premises seems low by comparison. The previous free-standing scheme for adaptations to premises, incorporated within ATW, was little used.

The impact of the new arrangement, whereby employers are expected to procure the aids themselves and then claim a grant towards the costs, is currently being researched. It seems likely to reduce take-up, given that employers need to resource the provision themselves.

There are occasional opportunities for the joint funding of adaptation services. Examples might include a disabled person who requires an adapted car for their job: this could be part-funded by the Motability scheme and part-funded by Access to Work. If an individual needs a wheelchair for use both at home and at work, it is possible that the Health Authority and Access to Work Scheme may consider joint funding.

IV.3.6 Disabled people who benefit and those who miss out

ATW recipients

The government-commissioned survey of ATW one year after introduction, carried out by SCPR, provides evidence of the characteristics of disabled people who benefited. Comparisons were made between the recipient sample and respondents to the Labour Force Survey (LFS) in winter 1994/95 (although the definitions of disabled people in the two surveys were not strictly comparable).

Age and sex

ATW recipients were more likely to be in the 25 to 49 age range and less likely to be in older or younger groups than were the disabled labour force generally. ATW recipients were also substantially more likely to have higher qualifications than disabled people in the labour force generally, but this may be partly accounted for by the age difference. ATW appears to benefit more women than would be expected from the LFS: 51 per cent of recipients in the ATW survey were women.

Industrial sector

There were large differences in industrial sector, as shown in Table IV.1:

Table IV.1: ATW recipients and Labour Force Survey by Standard Industrial Classification

	<i>Recipients %</i>	<i>LFS %</i>
Agriculture, forestry, fishing	1	3
Energy and water supply	0	1
Manufacturing	14	20
Construction	1	7
Distribution, hotels and restaurant	7	20
Transport and communications	3	7
Banking, finance, insurance etc	10	14
Other services	61	30

Source: Beinart *et al.*, 1996

The main industries in the 'other services' category for ATW recipients are public administration (26 per cent), health and social work (21 per cent) and education (ten per cent).

Occupation

Looking at occupational classification, the survey found that four in ten applied for support in connection with clerical and secretarial occupations (52 per cent of women compared with 27 per cent of men); 17 per cent

worked in associate professional and technical occupations, such as scientific technicians, legal associate professionals and computer programmers.

About one in five ATW recipients were civil servants.

About four in five (81 per cent) worked full-time in their ATW-supported job and 17 per cent worked part-time (less than 30 hours a week).

ATW recipients were less likely to be self-employed.

Disability

ATW recipients appear more likely than the disabled population at large to have difficulties seeing or hearing: 21 per cent of ATW recipients had visual problems and 23 per cent hearing problems.

In summary, it seems that ATW aids and adaptations benefit the better qualified, middle-age range, women, people in secretarial, clerical, professional and technical occupations, those working full-time and people with visual and hearing impairments. It appears that recipients have relatively stable employment in one job.

The profile of recipients raises questions about the role of ATW for part-time and casual workers. Disabled workers who have multiple jobs will find it difficult to transport adaptations between workplaces and this can inhibit the funding of aids.

Beneficiaries of voluntary provision

Some disability groups are better resourced than others and this is reflected in the coverage of adaptations for disabled workers with specific impairments; people with visual impairments appear to fare better than some other groups. The number of people who receive practical aids and adaptations for employment from voluntary sources is likely to be small.

IV.4 ACCOMMODATING WORK ROUTINES TO THE DISABLED WORKER

IV.4.1 External advice services which assist in the adjustment of work routines to individual needs

External advice is available from the sources mentioned in IV.2.1 but, as far as we know, there is no market specifically in advice for the adaptation of work routines. It is difficult to quantify external advice services available to the enterprise for adjustment of work routines. The breakdown of support provided through Access to Work reflects measurable interventions rather than advice. It is possible that DEAs working for the ES Disability Service advise on accommodating work routines as part of their role in arranging concrete adaptations.

Some impairment-specific voluntary organisations are working proactively with employers. RNIB, for example, is working with employers in the financial sector to tackle the issues of technical development and changing work practices. Some voluntary organisations, notably in the mental health field, are advocating the use of 'buddies' to provide on the job support to people who are at risk of losing a job because of illness or disability.

There is evidence from several surveys that employers do make changes to work routines to accommodate employees who becomes disabled. The Multi-Purpose Survey of Employees in 1996 (see I.2.2) found that 30 per cent of the employers who were surveyed and who were covered by the DDA had made changes to working practices to accommodate disabled employees. The most common changes were the redeployment or transfer to other duties of those who had become disabled. Twenty-nine per cent had made changes to working time. It is likely that changes are made in response to needs without having recourse to external sources of advice. Within larger workplaces, union representatives or occupational health departments may provide advice.

IV.4.2 Comparison of the availability and use of provision to support job retention with provision to support access to work

The adjustment of work routines is more likely to apply in situations where an employee becomes disabled.

The Access to Work scheme, which has given support to more people who are already in a job than was originally intended, can provide help to adjust work routines through the financing of 'support workers'. Support workers are most commonly provided to help people with visual impairments to read at work (34 per cent of recipients in the SCPR survey), for communicators or interpreters (25 per cent), or to help with particular tasks at work (20 per cent). They are thus a form of aid rather than an adjustment to the nature of the work.

The type of support sometimes known as 'job coach' or 'buddy' does not seem to be available for job retention through ATW. People in these roles can be influential in changing the organisation of the work, as well as supporting the individual to do the job. Job coaches can be provided in Supported Placements (a separate ES scheme) but are used mainly on entry to a job. Agency providers contracted to ES to provide supported employment also use job coaches, but again rarely for retention. Some pilot projects have been proposed by voluntary bodies to use buddies for retention.

Anecdotally, some employers are interested in using external services to help them to adjust work routines. The Disability Leave pilot scheme, described in Part I, promotes such action. The problem lies in forging links between employers, employees in need and external providers of advice.

IV.4.3 Factors which encourage or discourage take-up by employees and by enterprises

As in the case of technical equipment (IV.3.5), the main factors which discourage take-up are a lack of awareness and a lack of information.

However, some demand for external advisory services in relation to accommodating work routines is likely to flow from efforts such as the Disability Leave Initiative (see I.1.3).

As yet, few cases brought to Industrial Tribunals under the DDA have focused on adaptations to work routines. If such requirements are highlighted by test cases it is possible that demand for services will occur.

IV.4.4 Disabled people who benefit and those who miss out

No data are available about adaptations to work routines.

Action to adapt work routines needs to be timely. In addition, it is possible that employees who become disabled and who need such adjustments may not fall within the scope of the DDA and employer action will be discretionary. As with other voluntary practices, the employer is free to decide which employees are worth investing in.

People who become mentally ill are particularly likely to need adjustments to work routines and employers are said to be ill-informed about appropriate actions.¹⁵¹

IV.5 Significant services for promoting job retention or return to work

There is limited evidence on the full range of provision available. Access to Work has been shown to be used primarily for aids and adaptations for individual workers in work. The combination into Access to Work of a number of separate schemes has improved accessibility and disabled workers now find it easier to obtain multiple aids, adaptations and other supports according to their assessed needs.

IV.6 DESIGN AND IMPLEMENTATION

IV.6.1 The effects of inter-agency collaboration in the design and development of adaptive technologies

There is little doubt that there is quite a lot of collaboration between the agencies involved in the design and implementation of services which promote job retention and return to work. However, the incredibly large number of individual organisations involved means that collaboration takes place in an *ad hoc* and uncoordinated way, which has a significantly adverse impact on the delivery of service. It is expected that the pilot programmes established under the National Disability Development Initiative (III.6.1) will help resolve some of these difficulties.

IV.6.2 Factors in control, funding, management or staffing which impede or facilitate adaptation services

Current levels of Disability Services staffing and funding are not adequate to ensure effective services to adapt work-stations, workplace and job procedures.

A number of problems were identified in the government-commissioned survey of ATW one year after implementation (Beinart *et al.*, 1996):

- speed of delivery of support: the mean waiting times for 'adapted equipment/premises' and 'special aids and equipment' were 9.3 weeks and 7.2 weeks respectively; 23 per cent of recipients of special aids and equipment waited more than nine weeks;

- DEAs experienced problems in one third of the cases about which they were interviewed: these involved delays in assessment, obtaining technical reports or medical reports, equipment installation, and administrative delays;
- the requirement to demonstrate value for money encouraged PACTs to utilise the Central Equipment Service which provided second-hand ATW equipment - but users in an independent monitoring study reported problems with second-hand equipment¹⁵²;
- PACT managers repeatedly mentioned obtaining three price quotations and 'shopping around' for the most competitive price: this adds to administrative burden and delays;
- it was felt that more advice was needed in assessing clients' technical needs;
- increased workload and bureaucratic procedures were reported.

In our opinion, an overriding government body could become the hub of research, advisory bodies, training and design which would greatly facilitate the process.

IV.7 LINKS WITH EMPLOYMENT POLICIES

IV.7.1 The effect of employment policies on the use of adaptation services

The introduction of the DDA, which has encouraged many employers to change their employment policies, is expected to have a significant impact on the take-up of services to adapt work and the workplace. Currently, the DDA applies only to employers of 20 or more, but this is under review. Small employers not subject to the Act are less likely to be willing to pay the charges under the cost-sharing arrangements for ATW grants and may lack the resources to procure the necessary adaptations. Policies which encourage employers to change practices voluntarily have had less effect on small employers.

IV.7.2 Effect of labour market structure and demand on use of adaptation services

The growth in part-time work may create more opportunities for disabled people who find full-time work not practicable because of tiredness or other factors. However, there is little evidence of ATW being used to support people in part-time jobs. It is likely that home working (or tele-working) will enable disabled people to participate in mainstream employment with the use of adaptive technology such as computers and modems. It is clear that, as the economy in the UK becomes more service-based, there is a greater potential to use adaptive technology to enable the participation of disabled people in the workplace. However, the gradual down-sizing and delayering of organisations will have an adverse impact on the use of adaptive technology because it is less likely that disabled people will be able to compete in these environments. Although service industries in theory offer more flexibility to change the demands of the job to meet individual needs, many organisations have become streamlined to the extent that opportunities for job adjustment or redeployment are very limited. Small employers can find it particularly difficult to adapt the nature of the job, in part because of the consequences for the workload or earnings of other employees.¹⁵³

IV.8 LINKS WITH BENEFIT AND COMPENSATION PROGRAMMES

IV.8.1 Arrangements for the joint funding of adaptation services

There are no links for the joint funding of adaptation services involving benefit and compensation programmes.

IV.8.2 Opportunities to receive rehabilitation benefits in adjusted working arrangements

Disabled people receiving incapacity benefits may work under the exempt earnings scheme to earn a small amount of money without it effecting their current benefit situation. This must be deemed necessary by the individual disabled person's general practitioner but is very rarely used. There is no option of receiving help from Access to Work for 'exempt' work and this has been identified as a defect of the ATW programme.¹⁵⁴

IV.9 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

IV.9.1 Co-ordination between employment support, rehabilitation and workplace adaptation services

There appears to be relatively good co-ordination between employment support and workplace adaptation services: this has a positive influence on job retention and return to work. PACTs have responsibility for both aspects and are well placed, when making assessments, to provide a wide range of support. Advice on adapting working arrangements appears less well developed, however. Medical rehabilitation services rarely help with workplace adaptation.

IV.10 The most relevant factors affecting the potential of job adaptation measures to promote job retention and return to work

- Legal obligation under the Disability Discrimination Act.
- Awareness and information about the practicality of various adjustments, how to obtain them and the funding available.
- Assumptions of limitation, imposed by employers and service providers on disabled people.
- Assumptions of limitation imposed by disabled people on themselves, resulting from psycho-social factors following the onset of a disability.
- A lack of imagination, fear and general ignorance about the employment potential of disabled people.
- Failure of service providers to recognise and deal with employers as customers.

ENDNOTES

¹⁴⁶ Beinart *et al.*, 1996.

¹⁴⁷ Finn, 1992.

¹⁴⁸ The Computability Centre (TCC) (1997) *TCC Focus: The Magazine of the Computability Centre*, Issue One, spring.

¹⁴⁹ Ibid.

¹⁵⁰ Key Note (1995)

¹⁵¹ Interview with Susan Scott-Parker, Employers' Forum on Disability.

¹⁵² RNIB/RADAR, 1996.

¹⁵³ Corden and Thornton, 1997.

¹⁵⁴ RNIB/RADAR, 1996.

V. ENTERPRISE STRATEGIES

This final Part provides information about effective enterprise policies, management systems and programmes to retain workers whose continued employment is at risk because of disability. The focus is on activities which are introduced and managed by enterprises as an integral part of human resource and workplace relations management. It includes both integrated policies for the management of disability and specific practical initiatives in the workplace to promote job retention.

V.1 CORPORATE POLICIES AND PLANS

V.1.1 The development and prevalence of corporate employment policies and plans for the retention of disabled employees

Few enterprises in the UK currently have strategies for the retention or return to work of workers whose employment becomes jeopardised by disability. Human resource functions are required to regularly demonstrate their worth to shareholders and management and find it difficult to maintain their welfare stance. Increasingly, any enterprise welfare programmes are outsourced to independent counsellors and trainers, as it is easier to allocate the costs of such programmes externally. The availability of social security benefits and NHS medical support removes much of the pressure on enterprises in this area. Furthermore, the key internal drivers and players to initiate job retention strategies are unclear. Prevention, compensation and rehabilitation issues in the workplace tend not to overlap into job retention strategies and the related staff in UK enterprises operate separately from each other.

While integrated 'disability management' is uncommon, large enterprises are increasingly adopting statements of intent for the retention of workers who become disabled and there are some initiatives to favour retention. However, although there is considerable research interest in employers' practices, this possibly gives a false impression of the importance of the issue in policy and practice terms.

Equal opportunities policies

There is some evidence that UK enterprises with more than 20 employees are modifying policies with regard to disabled employees as a response to the employment provisions of the DDA. Under the Act, enterprises are under a duty to make a reasonable adjustment to accommodate the retention of workers deemed under the Act to be disabled (see I.1.2).

In December 1996, a survey by *Equal Opportunity Review* (EOR) staff, directed at the question of disability policy, found that 87 per cent of respondent employers had a written policy on the employment of disabled people.¹⁵⁵ However, it should be noted that, out of the 1,400 companies approached, only 218 (15 per cent) responded. Respondents to EOR surveys are more likely to be large companies and those with some commitment to 'good practice' in employment of disabled people are probably more likely to respond. As reported in I.2.2, the more reliable Multi-Purpose Survey of Employers (MPSE) in the spring and summer of 1996 of 1,100 establishments with more than ten employees found that 45 per cent of companies covered by the DDA had a formal policy on employment of disabled people. A second wave of the survey is being carried out in late 1997.

It is widely accepted that enterprise-level disability and employment policy in the UK has been influenced by the development of equal opportunities policies originally intended to address employment discrimination against women and black and ethnic minority workers. It is our opinion that it would be exceptional if an enterprise with an established equal opportunities policy did not include the treatment of disabled people within such a policy. Specific policies addressing the employment of disabled people are less common: a national random survey commissioned by the government before the DDA was introduced into Parliament found that only 17 per cent of establishments had such a policy, compared with 48 per cent which included policies for disabled people in general policies.¹⁵⁶

The following is an example of a typical Equal Opportunities statement:

Our aim is to ensure that no potential employee or existing employee receives less favourable treatment than any other prospective employee or member of staff on the grounds of race, colour, nationality, ethnic or national origin, religion, gender, marital status, disability, or is disadvantaged by conditions or requirements which are not justified in terms of the job to be done.
(Large local authority)

Most employers who responded to the EOR survey had a disability policy prior to the DDA. However, the survey provides no information on whether the organisations which responded to the questionnaire have taken any action or developed any policies relating to the retention or return to work of disabled employees.

Diversity policies

As part of a ten year study in diversity management, a 1997 survey of 445 enterprises found that 28 per cent had a diversity policy against 81 per cent having an EEO policy. It was concluded that the concept of diversity as part of organisational culture was still in its infancy in the UK.¹⁵⁷

Diversity policies are based on the principle that the natural diversity in the community should be reflected within an enterprise. Such policies are gaining favour with the Institute for Personnel Development¹⁵⁸ and ethnic minority communities, and have gained some ground among employers with a public interface, such as the BBC. Arguments for valuing diversity and the 'business case' for inclusive employment and promotion policies are closely allied. In principle, at least, diversity policies can cover all disabilities, illnesses and injuries, as the core philosophy of diversity management is to 'value the individual'.¹⁵⁹ However, the extent to which diversity policies promote the retention of disabled workers as such is unclear.

The European Business Network for Social Cohesion (see V.1.2) promotes the employment and retention of marginalised groups, although the focus of this network is currently on racial and ethnic diversity rather than disability.¹⁶⁰ The logic of this approach stems from the fact that 1997 is the European Year Against Racism and ethnic and racial differences are more likely to be visible, thus more easily targeted, than disability.¹⁶¹

Policies for job retention

A survey conducted in 1993¹⁶² reported that companies already employing disabled people and larger enterprises were more likely to have experienced an existing employee becoming disabled and understand the greater pressure to 'do the right thing' in such cases. This may indicate that programmes for the job retention of *existing* disabled or ill employees are more likely to be embraced by enterprises than programmes for the employment of disabled workers in general.

In some enterprises, policies for the retention of workers who become disabled are closely associated with procedures designed to deal with incapacity and retirement on the grounds of ill health. There are a variety of workplace-based permanent health insurance or pension policies available to enterprises in the UK which may influence job retention. We have no evidence of the direct application of these by enterprises to job retention but there is, however, indirect evidence of their application to channel certain categories of worker toward redundancy or to influence the disabled worker's incentive to remain at work¹⁶³ (see V.10.4). For instance,

Employees who are unable to meet the requirements of their contract due to physical or mental incapacity shall be given every consideration in terms of counselling, retraining and re-deployment to help them perform to a satisfactory standard. The company does however reserve the right, should this be necessary, to terminate a contract of employment by reason of incapacity. Subject to certain conditions, employees who are considered incapable of continuing in the employment of the company may apply to the trustees of their pension plan for ill health retirement.

(Large engineering company)

One of the authors of this report approached a small sample of twelve large employers in the private and public sectors and enquired if they have a written policy addressing the retention of workers who become disabled or who experience health problems.

These organisations included:

- two large city local authorities and a large inner city police force
- a large engineering company
- a major telecommunications provider
- two high street banks
- a major electricity provider
- a large civil service department
- a healthcare provider.

Each organisation reported that they had a written policy which addresses the retention of employees who become disabled. These policies are in most cases only statements of intent, rather than effective procedures for managing the job retention of disabled workers. For instance:

The company is willing to make to make reasonable adjustments to the physical features of premises or employment arrangements to help accommodate employees with disabilities and will make every reasonable effort to retain employees who acquire a disability or health problem within the course of their employment.

(Engineering company, employee handbook, 1997)

We are committed to making every effort to retain people who become disabled and this has long been company policy. It is, nevertheless, the most challenging of the five commitments (Disability Symbol). Among other measures, increased use of supported employment is being considered.

(Line managers' information pack, telecommunications provider, 1997)

We will make every effort, if an existing employee becomes disabled, to retain them within the workforce, wherever reasonable and practicable.

(Policy statement, bank, 1997)

A major flaw in studies of employers' retention policies is that they focus only on intentions and not on actual practice in the event of someone becoming disabled. In the government-commissioned telephone survey of a random sample of employers, virtually every respondent reported that they would be prepared to take positive steps to retain an existing employee who becomes disabled.¹⁶⁴

Influence of models of good practice

Employers who adopt the Employers' Forum on Disability (EFD) Agenda on Disability Ten Points for Action make a commitment that any employees who become disabled will be given the fullest support to maintain or return to a role appropriate to their experience and abilities within the company. Nothing is known about the effects of this commitment on actual practice in retaining such employees.

Similarly, enterprises that use the Disability Symbol, which is promoted by the Employment Service, are making a commitment to make every effort to retain workers who become disabled. There is a procedure in place for the Employment Service to review the performance of organisations using the symbol, although very few have had the symbol withdrawn because they were not honouring previous commitments. As one might expect, Disability Symbol users are much more likely than non-users to have a specific employment policy for disabled people and are more likely to be employing disabled people.¹⁶⁵ However, the direct influence of the programme on practice is not proven and it is likely that it is mainly employers with good existing practices which signed up to the scheme.

Sick leave and absenteeism policies

The impetus for an enterprise to establish a sick-leave or absenteeism policy can vary. For example, such a policy may be underpinned by a genuine concern for the employees' health or, conversely, by a belief that workers who take sick leave are malingerers. Conceptually, at least, an absenteeism policy can promote an open dialogue about the needs of disabled workers to take time off. In theory, workers may subsequently be given some flexibility to attend clinics etc. during work time rather than be forced to use up their sick leave allocation and disguise their needs.

Attendance incentives are becoming an active strategy to reduce absenteeism. An illuminative example of the application of such incentives to promote job retention is found in the Oldham Health Care Trust. As part of its incentive scheme to promote attendance, the Trust offers a rehabilitation plan where disabled workers are offered shorter hours on full pay for a limited period.¹⁶⁶ In conjunction with other rehabilitation interventions, such as enterprise-based occupational therapy, this aims to promote both attendance and recovery. An interesting option for staff at the Oldham Health Care Trust is that employees who do not take any sick leave for a year are eligible for bonus Air Miles prizes.

A 1996 survey by the Industrial Society estimated that 15 per cent of organisations paid attendance bonuses; these organisations also tended to have higher sickness absence rates.¹⁶⁷ This suggests that attendance bonuses are used to encourage the attendance of workers in low motivating jobs. In our opinion, however, their use can promote attendance under duress if a person ill or injured, and discourages effective rehabilitation and recovery.

Attendance incentives may exacerbate the situation of workers who need sick leave as a buffer against forced resignation (see V.8.3).

Remuneration policies

We could find no evidence of enterprise remuneration policies which directly address retention. However, performance-related pay schemes, attendance/absenteeism policies, and workplace health, incapacity and pension schemes can have a considerable impact on a disabled worker's decision or ability to remain in employment.

Performance-related pay schemes can apply to disabled workers under the DDA where pay may be reduced in line with decreased or fluctuating productivity.¹⁶⁸ This allows workers to remain in employment when disability or illness consistently affects productivity or performance. Such a scheme may not be applied just to disabled workers but must be standard practice for all comparable classes of work; it may thus be difficult for an enterprise to apply this strategy selectively, simply to accommodate disabled workers.

The performance and attendance rates of the individual disabled workers can directly impact on the redundancy, training, and promotions policies of UK enterprises.

V.1.2 Prominent actors and influences in the development of policies and plans for the retention of disabled employees

Within enterprises

Human resource functions

In many enterprises, the human resource (personnel) department includes staff who are responsible for managing the enterprise's EEO policy, Health and Safety obligations, employee benefits such as private health insurance and the occupational pension scheme, and co-ordination between training, job performance, remuneration and workplace health. In small and medium-size enterprises this role is likely to be handled by the manager or owner, or delegated to an office clerk.

Historically, the human resource functions of middle and larger-sized enterprises have adopted a welfare philosophy towards employees, and job retention has been informal but supportive. More recently, the human resource function has not remained as a small welfare office attached to the payroll section but is seen as a strategic resourcing function of the enterprise. The benefit of this new profile is that the role of employees in adding value to the enterprise is made more obvious, while the disadvantage is that the cost-benefit scrutiny of human resource activities has increased.

Occupational health professionals

In the larger enterprises, there is generally a range of occupational health professionals on site and may include a doctor, occupational health nurse, occupational hygienist, and other health professionals such as chiropodists and haematologists. A study conducted in 1992¹⁶⁹ found that, overall, health professionals were available in eight per cent of private sector workplaces; this proportion varied from five per cent in those employing fewer than 25 people, to 32 per cent with between 25 and 199 employees, and 68 per cent of those with more than 200. Only 36 per cent of employees in the private sector are thought to be covered, compared with 98 per cent in the public sector: the percentage of all employees is around 53 per cent. The role of these professionals in the

workplace is a topic of considerable debate at the moment in the UK. Their role in job retention programmes brings some professional dilemmas to the surface in relation to the screening of those returning from sick leave, the determination of disability and protection under the DDA, determining the appropriateness of reasonable adjustments, confidentiality concerns, and decisions about lay-offs and terminations.¹⁷⁰

James *et al.* (1997) reviewed the roles of occupational health (OH) professionals in the UK and argue that OH professionals play a reactive role in the enterprises which employ them. Table V.1 is compiled from a survey by Bunt (1993) of public sector organisations:

Table V.1: Role of Occupational Health Professionals in the Public Sector

<i>Responsibilities</i>	<i>%</i>
Medicals	89
Regular health checks for some staff	83
Advising on health and safety measures needed	82
Attending health and safety meetings	82
Identifying other areas which might cause health problems	72
Monitoring sickness absence records	54
Implementing health and safety procedures	51
Management of Health and Safety	47
Carry out Control of Substances Hazardous to Health assessments	37
Treating ill health/accidents	18
Other	3

Base: employees in public sector organisations using health professionals

Source: James, Bruyère and Cunningham 1997, citing Bunt 1993.

Union representation

The role of unions in the workplace is undergoing considerable change, with a likely redirection of effort toward cooperation with management rather than resumption of the adversarial relationships of a decade ago. The introduction of European Works Councils (see I.3.1) should improve the visibility of the union (or other employee representatives), and the policies of the new government toward employee representation should encourage formal workplace labour consultations on health and safety and equity issues. Union representation of disabled workers is inconsistent. Union policies which trade sick days for productivity bonuses may aggravate

the condition of disabled workers and make them the scapegoat for productivity losses. Furthermore, union membership may be a prerequisite for support and those disabled workers who are on casual or part-time rates and/or do not contribute fully to union funds may be disadvantaged.

Board and Senior Management Teams

Support from such teams can depend on their personal experiences of disability and resultant empathy for disabled workers.

Facilities managers

Facilities managers (concerned with the built environment) are responsible for the acquisition of equipment and furniture at the workplace. A disability-aware facilities manager can often work proactively by purchasing office furniture etc. with inbuilt adjustments, reducing the need for much specialised equipment.

Health and safety managers

Health and safety managers are more visible in large enterprises and may be hesitant to consider any job retention measures. They will be aware that workers who are not fully fit and healthy can be seen as posing a health risk to themselves, other workers, and the customer and general public with whom the enterprise interacts. They will also be aware that continued employment while injured or ill could lead to later claims of aggravated injury at law.

Others

Other internal players may include consultative groups comprising disabled employees and equal opportunities or diversity forums.

Outside the enterprises

Government agencies

The Employment Service co-ordinates and markets the Disability Symbol through local PACTs. PACTs have access to enterprises in their job finding and placement function. PACTs and regional officials of the Employment Service advise on the development of enterprise policies and practices with regard to the adoption of the five Symbol Commitments, one of which relates to job retention. However, it is not known how far these actors provide support for the development of corporate retention policies.

The Department for Education and Employment provides codes of practice and leaflets providing advice on the DDA.

Trade unions

Through its Disability Campaign Headquarters, the Trades Union Congress (TUC) supports the employment rights of disabled workers. This is done through public campaigns, providing strategies for negotiating for improved conditions for disabled workers, such as disability leave.

Specific unions maintain campaigns to raise employer or worker awareness of certain illnesses particularly prevalent to their craft or industry. Such campaigns can be very powerful in raising the reporting rate under the Reporting of Injuries, Diseases and Dangerous Occurrences Regulations 1995 (RIDDOR) and improving compensation claims under Industrial Injuries Disablement Benefit for certain illnesses (e.g. miners' 'black lung').

The Trade Union Disability Alliance (TUDA) is a relatively new and small organisation of disabled trade unionists from a range of unions. It trains and seeks representation by and for disabled workers. It runs short courses to educate union members in disability issues and strategies for empowering disabled workers.

Insurers

Private insurers in the UK cannot be seen to be proactive in the area of job retention: they focus on marketing generic products rather than providing customised enterprise-based services. The Association of British Insurers (ABI), representing 95 per cent of British insurers, publishes a guide for insurers for disabled people which includes the legal requirements of the DDA for the inclusion of disabled workers in group and individual occupational schemes. In the UK, the work-relatedness of injury and disease has a bearing on the response to disabled workers by insurers.

Employers' federations

The Confederation of British Industry (CBI) promotes the retention of disabled people through the 'business case'. In its 'checklist for action' the CBI suggests that employee profiles be compiled to assess individual needs and that subsequent flexible working patterns and other work accommodations be considered.¹⁷¹ The Union of Industrial and Employers' Confederations of Europe (UNICE) delegates issues concerning the employment of disabled workers to the national levels so its direct involvement in job retention policies is not evident in the UK. Overall, UNICE supports a proactive and interdisciplinary response to disability at work.

Community-based networks

There are ten regional or local Employers' Networks on Disability in the UK, which draw on subscriptions and grants to co-ordinate and distribute information on innovations and the provision of goods and services to, and the employment of, disabled workers. These networks promote the Disability Symbol and disability best practice policies. Coverage of these local networks is low and the main reason for not joining is the lack of any perceived need for the type of support one could provide.¹⁷² The Department for Education and Employment has produced a guide to establishing networks such as these.¹⁷³

The European Business Network for Social Cohesion (EBNSC) is a network of companies which endorse the Declaration of Businesses against Exclusion. The London Enterprise Agency (LEntA), a consortium of 20 major UK companies, coordinates the EBNSC in the UK. LEntA is well resourced and able to pilot inclusive employment programmes, especially around London.

Other external actors

- The Commission of the European Union.
- Voluntary organisations and small companies, including those run by disabled entrepreneurs, providing technical advice and support.
- Other employer and professional organisations (Employers' Forum on Disability (EFD), Institute for Personnel Development (IPD), the Industrial Society, and industry or sectoral employers' organisations).
- Organisations of and for disabled people.

V.2 CO-ORDINATED RESPONSES TO DISABILITY

V.2.1 The development and prevalence of integrated disability management systems

Individual enterprises have adopted distinct arrangements for managing disability in the workplace. There is little evidence of the development of arrangements for the systematic management of employee disability within UK enterprises. Arrangements that do exist cannot be regarded as 'integrated management systems', as approaches tend to be piecemeal.

It is possible, in theory, to link disability management-type programmes in UK enterprises with other personnel functions such as training, health and safety, occupational health, performance appraisal and Equal Employment Opportunity (EEO) concerns. Given the relative lack of occupational health programmes in the UK workplace, compared with the regulatory presence of health and safety practices in most UK workplaces, it is conceivable that any integrated programmes would include the health and safety function. However, the statistic that only 40% of work injuries are reported (HSC, 1996) suggests that proactive health and safety surveillance in the UK is limited.

Insurer input

The 'safety net' of the welfare state (sometimes dubbed the 'culture of dependence') is limiting the incentives for employers and insurers to develop disability management programmes in the UK. Both employers and workers view the state as providing for disabled people both in injury and old age and therefore the former see little reason to work pro-actively to retain disabled workers. This is seen in contrast to the USA, where one interviewee¹⁷⁴ for this study found that employees in USA-based firms believed that, despite rhetoric to the contrary from government, individual employees would need to be self-sufficient if they become retired through ill health or disability.

V.2.2 The characteristic features of integrated disability management systems

Integrated disability management programmes are relatively sparse in UK enterprises. Generally, the different staff responsible for collaborating in the development of such programmes are separated by disciplinary barriers: occupational health professionals have a distinct role in providing health examinations; health and safety professionals focus on compliance with regulations; EEO staff also focus on compliance; while human resource professionals focus on absence, productivity and health insurance coverage.

While at times these groups can co-operate, as in the examples below, it is often difficult to have good information on the needs of the workplace. Disability audits, which are a key to developing an integrated response, are difficult to implement. Workers are not willing to identify themselves as disabled when this information will be shared on a database across the enterprise.¹⁷⁵ In the past, the human resource department performed a separate welfare role where disabled workers could express their concerns in confidence.

The dilemma in the development of integrated disability management systems is that it can be seen as a tool to marginalise disabled workers and target them for redundancy as much as to target them for job retention support.

The following examples illustrate the features of disability management systems in the UK, as identified in interviews for this report:

The Post Office has developed an in-house service for employees who become disabled. It has been reported that occupational health staff at the Post Office work at the Post Office's own Disability Advice Centre. This is a resource base within the Post Office that is staffed by experts on adjustments and workplace accommodation. This Centre is available to all Post Office employees and contains a large range of equipment varying from different types of seating through to voice output computers for employees with visual impairments. Once they have received their initial Occupational Health assessment they are then assessed by the Disability Advice Centre. This internal resource is used to help the individual return to their original job or find an alternative employment opportunity within the Post Office. Integration within the Post Office has been improved with the merger of its Occupational Health and counselling departments.

Midland Bank has a rehabilitation policy which provides an opportunity for employees who become disabled to return or continue to work. The process involves independent employment assessment and retraining where appropriate.

The Ministry of Defence (MOD) has recently adopted a three-year action plan to promote equality of opportunity for disabled people at the MOD (within the civilian workforce). The policy on retention, in common with that of other organisations, is to provide advice to managers to ensure a flexible approach to retaining staff with a progressive disabling condition and individuals who become disabled while in employment.

UNUM, a supplier of long term disability insurance, provides a rehabilitation counselling service by medically qualified disability counsellors who focus on early intervention strategies looking at personal, medical and occupational circumstances. They review and advise on disability benefits and allowances and determine what type, if any, of particular rehabilitative help is needed in order to assist job retention or return to work.

Enterprises have been classified into three types, in relation to their responses to disability at work: those with a history of proactive EEO programmes; those aspiring to reform their corporate response to disability in line with the DDA; those with little experience in developing disability policies and unlikely to respond to the DDA.¹⁷⁶

Disability audits

These can be quite revealing and, if presented in a constructive way to respondents, they can provide an accurate picture of disability at work. For example, employees need to believe that the survey is being conducted to improve the quality of work life for disabled workers and not to target or marginalise any worker who identifies themselves during the audit.

V.2.3 Prominent actors and influences in the initiation and development of integrated disability management systems

Within enterprises

Human resource functions

Responsibility for maintaining a disability management database generally rests with human resource departments. The willingness of human resource professionals to devote time and resources to maintaining a disability management programme differs greatly across UK enterprises, as generally they need to demonstrate the value-adding rationale of such programmes on a continuing basis.

Occupational health professionals

Although represented in a minority of workplaces, occupational health professionals are keen to develop and maintain disability management integration at work, as it reinforces the credibility of OH at the workplace.¹⁷⁷

Senior managers

Benevolent support for job retention from senior managers is unlikely to translate into the development of integrated disability management systems unless the costs of such programmes are agreed upon between department heads and chief executives.

Pension administrators

Integrated disability management programmes are likely to receive the sort of attention from pensions administration which is counter-productive to retention. Disabled workers who are recorded on such systems can be targeted for enterprise retrenchment or retirement on grounds of ill health, so as to reduce the cost of early retirement to the pension fund. Moreover, retirement on the grounds of ill health is a common ploy to shift the pension burden onto health insurance.

Trade union representatives

Trade union representatives can be supportive of the integration of disability management at work mainly through the role of the health and safety representatives in unionised sites. Trade union representatives will be aware of the possibility that disabled workers, targeted in such programmes, may eventually be harassed into early retirement, 'scapegoated' for productivity decreases, or marginalised into lower quality work enclaves.

Health and Safety representatives

At present there are approximately 200,000 Health and Safety representatives in UK workplaces and they form an important role in the identification of risks and hazards and in enterprise policies, despite the move to the deregulation of health and safety.¹⁷⁸ This role is enhanced when the representative is also the shop steward for the union (a policy encouraged by unions and the Health and Safety Executive). Recent legislation has encouraged non-union sites to form joint safety committees and health and safety committees. However, although about 75 per cent of workers are covered by health and safety representatives, there is concern that the smaller workplaces are not adequately covered.¹⁷⁹ Although the new health and safety consultation of employee regulations encourage the formation of employer-employee collaboration, they do not extend the same rights to non-unionised sites as the earlier 1977 legislation. For example, health and safety representatives appointed by employers under the new rules do not have the rights of normal union health and safety representatives to inspect the workplace, investigate hazards and accidents and deal with health and safety-related complaints.¹⁸⁰

Outside the enterprises

The Health and Safety Executive (HSE)

The HSE is interested in improving the recording rates of workplace injury and ill-health following criticisms of existing systems (RIDDOR) in recent surveys.

Vocational rehabilitation professionals and institutions

There is some development of disability management-type courses within some further educational establishments, although this is not well advanced.

PACTs

Access to the working environment by the DEAs and other PACT members provides a potentially valuable link between different health and human resource staff within enterprises. There is anecdotal evidence that PACT staff are frequently approached by line managers to give advice on job retention or return to work strategies for workers other than PACT clients. This role allows PACT members to suggest collaboration among the enterprise staff who approach them individually.

Disability-related voluntary organisations

Disability-related voluntary organisations produce their own publications which provide advice to employers on the particular access to work and job retention strategies for a specific disability. In our opinion, although these organisations are seen as useful in supplying advice and referrals on disability-specific issues, they have yet to demonstrate their full understanding of workplace issues (such as productivity and enterprise culture).

Insurers

It is not surprising that insurers are considering the application of disability management-type programmes in response to the rising costs of occupational health insurance claims. Their willingness to increase premiums in line with experience ratings is, at the moment, the only strategy to indirectly encourage integrated disability management at the workplace.

Unions

The autumn 1997 Trades Union Congress encouraged a renewed effort to forge social partnerships across UK industry. A central plank of such partnerships is job security, and job retention strategies fall conveniently into the coverage of such partnerships.

V.3 PRACTICAL PROGRAMMES AND INTERVENTIONS IN THE WORKPLACE

V.3.1 Enterprise programmes targeted at employees potentially absent from work because of disability

Health and safety

As well as new legal obligations under the DDA to retain disabled employees by making adjustments to the physical environment or working arrangements, it is likely that the recent expansion of workplace health and safety regulations, largely driven by European Union law, and the widespread development of employee sickness absence management policies may be catalysts for the introduction of proactive disability management

programmes in the UK, as both insurers and the Health and Safety Executive¹⁸¹ are aware of the potential for active workplace strategies in the management of disability.

In recent years, health and safety legislation has been introduced in the UK covering the following areas:

- control of substances hazardous to health;
- noise at work;
- regulations on risk assessment;
- manual handling regulations;
- provision of protective equipment at work;
- minimum standards of lighting, ventilation, temperature, rest rooms and the general maintenance of the workplace and equipment.

A study conducted by Incomes Data Services¹⁸² reported that the recent expansion in health and safety legislation in the UK has influenced the development of enterprise-level occupational health services.

Occupational health

There are no data available on the role of the occupational health services in influencing the job retention of newly disabled workers. The main emphasis of these services would appear to be on health screening, that is, the early identification of the health problems of individual workers, leading to treatment.

It is our opinion that the growth in occupational health services and the raised emphasis on improving workplace health and safety in the UK will have a positive bearing on the job retention of newly disabled workers.

Workplace rehabilitation

Vocational rehabilitation programmes in the workplace are relatively rare. In a recent survey of over 200 branches of UNISON only half the employers in the survey had health promotion and stress management training programmes, and rehabilitation programmes were even less common (29 per cent).¹⁸³

The management of sickness absence

There have been considerable changes to the management of sickness absence in the UK in recent years. Most public and private sector organisations have taken steps to reduce levels of sickness absence amongst employees. However, measures have been taken in the main to reduce levels of casual or intermittent absence rather than long-term absence. It is our opinion that the general reduction in employee sickness absence in recent years can help employers to devote more attention and resources to employees who are genuinely in need of measures that will aid their job retention, such as assessment, rehabilitation, counselling and job accommodation.

UK employers have correlated sickness absence rates with 'non-sickness'-related factors such as minor ailments, a lack of commitment to one's work and family responsibilities, though evidence from Labour Force Surveys (LFS) and case studies tends to refute this. For example, the 1987-1991 LFS found that 42 per cent of absence spells were of more than six days' duration and 32 per cent were of two weeks duration.¹⁸⁴

Health credits

With encouragement from trade unions, a small number of employers (for example, Sheffield and Stockport health authorities, together with the trade union UNISON) have developed the concept of health credits. In

Sheffield, staff are allocated ten health credit hours a year. These are paid hours off work, which can be used by the member of staff in any way that they wish. Elsewhere they are termed mental health days or hours.¹⁸⁵ The belief is that allowing such leeway is seen by staff as a recognition of the need to promote health. It is seen as reducing stress and recognising that people have commitments outside work which may be difficult to meet without taking time off: such recognition is seen as a way of improving morale.

Employee assistance programmes (EAPs)

According to EAP Association publicity, EAPs have been in place in the UK for over twenty years, provided, in the main, through employee welfare schemes: the availability of external providers developed towards the end of the 1980s. The EAP Association claims that there are now more than a dozen companies providing external EAPs to over 600 organisations in the UK. It is difficult to assess the prevalence of employee assistance programmes in the UK. When asked by us, the Institute for Personnel and Development (IPD) reported that there is no information available on the numbers or names of UK employers making use of internal or external EAPs.

EAPs are normally provided by external private agencies who vary greatly in competence. Generally, an external provider offers a telephone helpline for employees to voice their emotional, financial, marital or drug dependence problems; the employee may subsequently be offered a short series of face-to-face counselling sessions provided under the EAP and funded by the employer. A recent study of enterprise use of EAPs noted the lack of accountability or professional quality benchmarks for EAP providers, but also noted their positive contribution to the management of absenteeism.¹⁸⁶

Health surveillance programmes

The low reporting rate under RIDDOR shows that only a small percentage of work accidents and illnesses are reported in the UK. One way for enterprises to take positive action to encourage the reporting of accidents and reduce hazards is to conduct health surveillance. A key strategy of health surveillance is the identification of employees at 'risk', and the retention of disabled workers would be accommodated in any comprehensive surveillance programme. A recent report for the HSE found that 40 per cent of large employers and 25 per cent of small enterprises (with less than 25 employees) had a health surveillance programme in place.^{187 188}

V.3.2 Enterprise personal support programmes

Most large employers provide counselling, retraining and, if necessary, medical and therapeutic support for their employees. However, the provision of mentoring, personal care assistants and transport to work is much less common.

Access to training and career progression

A neglected aspect of support for disabled workers is the quality of their work life after the disability has affected their employment. A recent study of 24 UK medium-to-large enterprises found that the monitoring of disabled workers' training and career paths is often limited. In a sample of firms the researchers found that one third either monitored the proportion of disabled workers participating in general organisational training or planned to do so, and only a third of respondents monitored the career paths of disabled employees.¹⁸⁹

V.3.3 Enterprise-initiated programmes to adjust the workplace and work-station

The Employment Service part-funds certain adjustments under the Access to Work Scheme. Many large employers, however, fund adjustments themselves and rely on the Employment Service only for the provision of technical advice. We asked a sample of 12 large UK employers if they had acquired items of equipment or other adjustments through Access to Work. Approximately one third said they funded adjustments themselves. Three of the organisations held central budgets for such funding and reported that demand on these budgets had increased significantly since the enactment of the DDA.

Table V.2 shows the actions which employers said they would be willing to take if an existing employee became disabled, taken from the report of a telephone survey commissioned by the government.

Table V.2: Actions that employers would be willing to take to retain an existing employee who becomes disabled in employment

<i>Action</i>	<i>Yes</i>	<i>No</i>	<i>Depends</i>
allow for special leave necessitated by disability	88.0	3.4	8.6
train/retrain	81.2	9.0	9.8
provide flexible working patterns	78.8	11.0	10.2
provide additional on-the-job support	77.5	9.7	12.8
employ job sharing	65.1	26.9	8.1
provide counselling	62.9	32.0	5.1
modify workplace/premises	56.7	17.5	25.8
provide special equipment	55.6	10.8	33.7
use home working	16.8	77.6	5.6

Random sample, weighted, N=1,241.

Source: Dench, S., Meager, N. and Morris, S. (1996)

The Multi-Purpose Survey of Employers (MPSE) in 1996 (see I.2.2) found that 43 per cent of companies covered by the DDA who employed disabled people had made changes to the physical environment and 30 per cent had made changes to working practices to accommodate disabled employees. Thus, the difference between 'willingness' and actual action is apparent.

The cost of the provision of special equipment to disabled workers is a key question. An earlier survey in 1993 found that 43 per cent of a sample of 1,077 employers thought there were extra costs in employing people with disabilities. Many employers were unwilling to estimate these costs but, of those that responded to this question, most were prepared to spend five to ten per cent of the person's gross salary as an initial cost and four to seven per cent per year as an ongoing contribution.¹⁹⁰ Surveys have shown the actual costs incurred: the MPSE found that 61 per cent reported that the costs were nil and 19 per cent spent less than £100 per disabled employee in the previous year.

V.3.4 Enterprise initiatives aimed at co-workers

Disability awareness training

Many large UK employers carry out disability awareness training and a significant number have provided specific training on the employment provisions of the DDA. Many cases of alleged disability discrimination brought under the DDA will concern dismissal on the basis of disability and early tribunal cases are confirming this. It would seem logical, therefore, that employers should focus on training programmes on the duty of reasonable adjustment and on the avoidance of disability discrimination. The provision of disability awareness training by external consultants is expanding.

A recent study found that half of the respondent enterprises approached by the researcher had considered or implemented this form of 'awareness raising'. Table V.3 outlines the responses of the 24 firms.

Table V.3: Extent to which disability awareness training has been carried out for particular groups of employees

<i>N=24</i>	<i>Yes</i>	<i>Intended</i>	<i>No</i>
senior managers	6	1	17
line managers	10	3	11
human resource staff	13	0	11
all non-managerial staff	2	2	20

Source: Cunningham and James (unpublished)

It seems clear that the majority of initiatives aimed at co-workers have come about in response to the DDA and are made possible by extensive marketing by external consultants (many of whom are disabled people). Within enterprises, the trades union representatives' role may expand in this direction but trades union representation is now at an all-time low.

V.3.5 Evidence of outcomes of programmes and practical interventions in the workplace

The impact of such programmes has rarely been explored; rather, they are assumed to be effective. Duckworth (1995)¹⁹¹ demonstrated that disability awareness or equality training in its own right does not achieve all the changes required. He argued that it is vital to have a legal framework which protects the rights of disabled people and an understanding within the business community of the commercial benefits of employing disabled people.

The DDA covers the actions of co-workers who support the disabled worker to initiate proceedings under the DDA. Harassment or victimization of the supportive co-worker by the employer is unlawful. Thus it is conceivable that such programmes may lead to greater advocacy by co-workers of disabled colleagues. This may, in turn, prohibit employers from informing employees about the full coverage of the DDA.

V.4 WORK ACCOMMODATIONS

V.4.1 Schemes initiated by enterprises to adapt working hours and work

Arrangements to adapt working hours and work tend in the main to be informal and *ad hoc*. Any 'schemes' are confined to encouraging managers to 'explore the possibility' of workplace accommodations. There seem to be few consistent or co-ordinated procedures to put work accommodations into action.

Examples of such 'schemes' include:

Explore the possibility of restructuring the post of a newly disabled employee or consider the possibility of flexible working or homeworking.¹⁹²

If a colleague becomes disabled, whether as a result of an illness or accident, there are steps which can be considered to enable them to return to work, either in their previous job or to alternative duties more suited to their changed abilities. In some cases a period of rehabilitation will be necessary before discussion and plans are made to facilitate return to work.¹⁹³

The Disability Leave project, detailed in Part I, encourages employers to consider adaptations of working hours and work demands as a matter of course when an employee becomes disabled.

Tele-working

Home-working strategies for disabled workers are currently being investigated by a European Commission-assisted project (MITRE). For example, the Royal National Institute for the Blind (RNIB) has set up a tele-centre through MITRE to employ and train blind people in tele-marketing.¹⁹⁴ People who become visually impaired while in employment are particularly vulnerable to job loss.¹⁹⁵ Although this example is of an enterprise which mainly employs disabled workers, such initiatives may also be cost-effective for other enterprises in accommodating disabled workers.

Disabled tele-workers in the UK are also involved in another European Commission¹⁹⁶ initiative - COMBAT (Corporate Marketing to Overcome the Barriers Affecting Disabled Tele-Workers) which aims to establish new tele-businesses and capitalise on new technologies to further the employment of disabled workers. No figures are available on the number of disabled workers in these enterprises. The UK, however, has 31 per cent of the total European base for tele-working call centres (3,117 installations averaging 33 agents each) and as this grows currently at 80 per cent annually it will provide opportunities that COMBAT can exploit in the near future.¹⁹⁷ These tele-working centres can be used by any enterprise as a form of work enclave for disabled workers who would benefit from such technological support utilised by tele-centres.

An Italian initiative (TWIN) has pilot centres in the UK. TWIN seeks to 'plan and evaluate the opportunities for the development and interconnection of specialised tele-work centres aimed at the integration of people with disabilities in the labour market at a pan-European level'.¹⁹⁸

Flexible work teams

The self-managing team is a popular concept in UK enterprises. The trend to introduce team-based pay, bonuses and rewards can, however, militate against the inclusion of disabled workers.

V.5 'RETURN TO WORK' PROGRAMMES

V.5.1 Enterprise-led 'return to work' programmes targeted at employees absent from work because of disability

A 1997 exploratory survey of 77 employers sought to gauge formal return to work activity and found these programmes to be patchy and inadequate.¹⁹⁹ The study covered a wide range of enterprise size; 59 per cent were from the private sector and 41 per cent from the public sector. Sixty per cent of the enterprises had some form of return to work policy. Table V.4 outlines the types of options offered to three groups of employees: employees temporarily unable to carry out their full duties; employees permanently unable to carry out their full duties; employees who contract a progressive condition which affects their ability to carry out current duties.

Table V.4: Return to work options provided to employees

<i>Options</i>	<i>Provided to all three categories of employees (%)</i>	<i>Not provided to any employees (%)</i>
Adjustments to working hours	46	7
Transfer to other work	38	13
Light work opportunity	40	28
Occupational and/or physical therapy	15	70
Home employment	14	72
Provision of rehabilitation	11	81
Counselling	41	37
Job duty rotation	24	57
Retraining	23	53
Equipment and tool modification	27	60

N=77

Source: Cunningham, 1997.

The low priority given to rehabilitation support is noticeable and, given the broad sampling frame of the survey, would probably be indicative of the general attitude to workplace rehabilitation in the UK as a whole.

Disability leave project

The disability leave pilot project (see I.1.3) established an opportunity for a group of employers to consider employee retention policies. Disability leave began with the aim of protecting jobs for employees who develop impairments in order to provide them with enough time to reach an informed understanding of future work potential.

This approach can be logically extended to offer a work break to enable disabled employees and their employers to make any adjustments required, whether practical or psychological. The process involves assessment, alleviation of employers' concerns, a disability leave policy, internal funding for case management and the provision of reasonable adjustments. The initial assessment is vital as this establishes the baseline from which procedures can be developed to ensure everything practicable is done to retain an employee who becomes disabled.

Insurance policies

Enterprises with insurance policies to provide replacement staffing when workers are on sick leave may be less interested in a return to work programme. The staff replacement coverage in insurance agreements, however, tends to attract higher premiums than more proactive insurance agreements.

Occupational health staff

In the UK the role of occupational health staff is primarily devoted to health assessments rather than return to work programmes (see V.1.2).

V.5.2 Components of return to work programmes and evidence of outcomes

Employee representatives and written procedures

The study by Cunningham (1997) noted the active role of employee representatives in return to work; 80 per cent of union-recognised enterprises indicated that a union representative was used to support the process. In addition, 41 per cent of enterprises with a written procedure noted a decrease in absence levels over the last three years, while 26 per cent recorded an increase (n=34). Of those without a written policy, 15 per cent recorded a decrease in absence records over recent years while 40 per cent noted an increase (n=20).²⁰⁰

Existing contacts

It appears that disabled workers utilise former employers and personal networks rather than public services when returning to work. In a 1993 study, about 14 per cent of a sample of disabled workers who had received Invalidity Benefit in the preceding year had returned to work. Of these, 64 per cent had returned to their previous employer, 13 per cent had found work through a friend or relative, nine per cent through a newspaper and only four per cent found work through a Jobcentre (or unemployment benefit office).²⁰¹ Most of these employees thought the return to work position was the type of job they wanted (82 per cent) while ten per cent thought it was a stop-gap, with the remaining eight per cent being unclear.

Assistance from employers

In the same survey, respondents were asked if they had received any assistance from their employer to carry on their work despite their health problems. After excluding a third of the employees who were not working at the

time their health problem started or who could not have carried on working because of the nature of their health condition, three in four (77 per cent) said their employer provided no assistance. For the one in four who did receive assistance, the types of assistance were: assignment to light duties (45 per cent); change to other work (31 per cent); getting other staff to help (19 per cent); permitting the employee to work shorter hours (14 per cent); or modifying the equipment for the employee to use (five per cent).²⁰² These results support the findings by Cunningham (1997 - see Table V.4) concerning the use of flexible routines rather than physical adaptations to assist disabled workers retain or return to their jobs.

Discussions with employers

Respondents were also asked if they had discussed the possibility of return to work with their employer at a later date. Excluding employees who said that their employer did not know about their health condition, two in three (66 per cent) said they did not discuss this with their employer.

Table V.5: Invalidity Benefit recipients who discussed the possibility of return to work with their employer

	<i>All (379)</i>	<i>Men (173)</i>	<i>Women(206)</i>
<i>Outcome</i>	<i>%</i>	<i>%</i>	<i>%</i>
Could not return	32	38	24
Could return to			
- same job, same conditions	47	42	53
- job with lighter duties	8	8	6
- shorter working hours	6	5	7
- different job	5	6	4
- other answer	4	3	7
Unclear	2	1	3

Source: Erens and Ghate, 1993.

This table suggests that there are no clear strategies for job retention or return to work on the part of employers. Nor do individual disabled workers have a clear idea of the options to pursue.

V.5.3 Enterprise measures to help disabled workers to find suitable employment elsewhere

Outplacement schemes

Employment in the UK underwent significant change during the 1980s and early 1990s. In response to downsizing by many companies, a broad range of commercial outplacement services has been developed. These are used both for disabled people and other employees. In essence, the employer pays the outplacement service

to find a new position for the employee being made redundant or otherwise dismissed. Outplacement schemes are often used during periods of mass downsizing to reduce bad publicity and ill feelings. The schemes also act as a buffer to claims of unfair dismissal and discrimination.

Business links and networks

The Department for Education and Employment publishes a *Good Practice Guide for Employers' Networks on Disability* in which members are encouraged to make a commitment to the employment of disabled workers (see V.1.2). This commitment extends to supporting a disabled worker's employment with other members when one member cannot retain the worker.

V.6 MOST PROMINENT STRATEGIES

No one strategy appears to be most prominent. The broad array of policies, programmes and practices appears to have developed in a very idiosyncratic manner. As a result, the return to work of the disabled individual is very much determined by chance.

The employer forums and networks are attracting much government praise and the strategy of 'leadership by example' tends to operate in most cases.

V.7 DEFINITION AND ASSESSMENT OF DISABILITY

V.7.1 The effect of perceptions of 'disability' on enterprise job retention programmes

As the DDA is the guiding piece of legislation affecting policy and practice in this area, the definition of disability under the Act will have a significant impact on perceptions of disability. For example, drug and alcohol dependency are specifically excluded conditions. It is as yet unclear whether or not stress and obesity will be included under the Act. In addition, illnesses which last less than 12 months will not be considered as disabilities unless they are likely to recur. People with HIV and other non-symptomatic conditions are specifically excluded from the definition of disability under the Act.

As noted in section I.9, it is unclear how occupational stress, diffused RSI and some occupationally induced diseases are conceptualised for purposes of health and safety coverage and compensation. Before enterprises are willing to respond to these concerns they must be convinced of the existence of these health issues. Often the employer's defence is that these health issues lack a clear trigger or onset, which is much more visible in the case of industrial accidents. Now, however, the rise of 'gradual mental stress' compensation claims (cumulative emotional problems stemming from adverse psychosocial problems at work) account for about 11 per cent of all occupational disease claims.²⁰³

Attention has recently spread to issues such as passive smoking and asthma, further encouraging both the regulatory agencies and enterprises to consider health and safety issues which have no clear triggers. It has also led to reviews by the Industrial Injuries Advisory Council and the HSE in an effort to stem the flood of civil claims for these conditions

Disfigurements, especially tattoos and body piercing, which are not covered under the DDA, may be accommodated in diversity policies. In some UK sub-cultures, such 'deliberately acquired disfigurements' are important status indicators but lead to negative perceptions at work and can also be potentially hazardous to health, for example, when pierced nose, lips etc. become infected. In contrast, any efforts to remove tattoos may be treated more favourably as disfigurement²⁰⁴ and come under a retention of disabled workers' policy.

V.7.2 The effect of procedures for identifying and assessing disability at work on access to enterprise job retention and 'return-to-work' programmes

No individual disabled person would ever be specifically excluded from retention or return to work programmes but, as the DDA has now established a new definition of disability, it is likely that this definition will also be incorporated into many programmes to ensure continuity. Occupational health practitioners are encouraging self-identification under the protection of the DDA.²⁰⁵ If illnesses and conditions at work have no clear cause, triggering job retention strategies is problematic and it is difficult to initiate early interventions. The time delays between the onset of a potentially disabling condition or illness and its effect on attendance and productivity tend to be obstructive. Workers can only wait until their condition has adequate physiological signs which attract attention and compensation through PHI or IIDB and protection under the DDA. The presence of a progressive condition can still lead to exclusion from occupational health schemes, and poor performance reviews.

Industrial injury disablement benefit assessment and compensation claims

Employer' liability insurance is a statutory obligation. Claims for compensation for industrial injury and ill-health rose threefold between 1983 and 1988²⁰⁶ and the assessment criteria, and backdating of claims, have been reviewed in response.

Claims for industrial injury disablement benefit require more than 14 per cent incapacity to receive any financial benefit for most accidents. The disability level must be 20 per cent for deafness although for certain lung diseases a threshold does not apply. Furthermore, the benefit can be claimed if a number of illnesses or injuries can be aggregated to achieve the 14 per cent rate. Overall, the medically-based assessment does not encourage the worker to seek early intervention related to the development of industrial deafness or illness, especially as there are no clear triggers or events which activate a claim. People with occupational disease or partial deafness may wait until their condition has deteriorated to the compensatory threshold rather than seek early treatment and attract attention prematurely to their disability. On the other hand, this strategy is diminished due to new restrictions on backdating claims for IIDB which affect compensation for industrial diseases and other progressive conditions. Concern has also been voiced that information on such diseases and conditions and individual case histories are held by third parties such as the occupational health professionals and are not released to either the DSS or disabled worker in time for an application for compensation to be made.²⁰⁷

V.8 INTERNAL RELATIONSHIPS

V.8.1 Effects of the relationship between actors within the enterprise on strategies to promote job retention

Co-workers

Co-worker resistance to the employment of disabled people has been demonstrated by Duckworth²⁰⁸ where he interpreted the complex relationship between co-workers' attitudes and behaviours towards disabled people. Duckworth argues that many of the difficulties posed by co-workers can be overcome by the delivery of disability equality or awareness training within a legislative framework that protects employees' rights.

Finance departments

Finance departments are likely to examine the productivity of individual disabled workers before initiating job retention efforts.²⁰⁹ Productivity seems to be the dominant measure of value of employees at the lower hierarchies of enterprises in the UK; this perception by UK employers would appear to lag behind those in the USA, for example, where loyalty, corporate culture and corporate image play a more important part in determining job retention strategies.²¹⁰

Union-management partnerships

Integrated disability management systems require bi-partite support in the workplace. The following, relatively unusual, example illustrates such a system:

At VSEL shipbuilders in Barrow in Furness, selected workers are trained as stress counsellors, maintain an occupational hazards database and systematically carry out surveillance on exposure and health problems based on worker-held records.²¹¹ The chair of the safety committee for 13 unions at the site co-ordinates a range of employee-led health and safety initiatives which have a strong job retention element. The programmes include an employee-managed database of hazards in relation to asbestos exposure, asthma, dermatitis, noise and vibration white finger exposure. This information is used to argue for job flexibility and job transfers for affected workers before the conditions lead to compensation and health-related dismissal. Additionally, a Roving Medical Report card is being used by many of the 5,500 employees to encourage their GPs and other health professionals to co-ordinate care and consider job retention strategies with reference to their health issues at every consultation.

A key aspect of the VSEL programme is that the needs of both management and disabled employees are managed by an intermediary (a Health and Safety Welfare Forum) to encourage employees to identify their needs and protect their confidentiality and job security. Once their needs are recognised, the forum initiates support and possible transfer to other duties.

Friction between Health and Safety and Human Resources

Bruyère and James (1997) note that, without the active co-ordination of health and rehabilitation, there is a danger of health and safety practices that undermine rehabilitation, or vice versa.²¹²

In most large and medium-size workplaces the human resource function manages both health and safety and employee productivity. It is difficult for the human resource function to be seen as an impartial and equitable provider of workplace support for disabled workers in relation to job retention activity. In some organisations, the employer contracts out the occupational health services to ensure the separation between workplace health and safety and personnel management. An example of such services is the non-profit-making Rochdale Occupational Health Services, which provides occupational health cover to more than 100 companies around Manchester. Its independent nature, together with the focus on preventive health and quality assurance, are seen as valuable aspects of the organisation's service.²¹³

V.8.2 Effects of recruitment and remuneration practices on job retention

Short-term contracts

The rapid introduction of short-term employment contracts has the potential to adversely affect job retention.

Pre-employment health screening

The DDA itself does not make explicit reference to screening. Despite attempts to prohibit it, the government's view is that 'in general employers should be free to use whatever recruitment procedures best meet their needs and to conduct medical examinations of employees where that seems appropriate'.²¹⁴ A disabled applicant may need to demonstrate their ability to perform and maintain a particular job role during the recruitment interview. However, if an employer uses health screening as an excuse for not employing a disabled employee, they will have to justify any potential discrimination before an industrial tribunal.

Remuneration

As performance appraisals increasingly include sickness absence as one of many criteria for considering individual pay levels, it is likely that disabled workers who require periods of rest and recuperation will find that their quality of work and remuneration falls, even through a job retention programme.

The DDA does not prevent employers from paying disabled people less if they are in performance-related pay schemes and their productivity is affected by their impairment, as long as this can be justified. The rights to employment enjoyed by disabled people under the DDA are also balanced by their responsibilities to comply with their contract of employment.

Disabled workers can be legitimately excluded from profit-related pay schemes if they have high absenteeism levels²¹⁵, as this constitutes an eligibility criterion.

V.8.3 Financial opportunities for and obstacles to internal job retention measures

It is necessary to develop a sound financial argument to ensure that employers understand the cost of ill-health retirement on the grounds of disability. Once this has been explored in detail (as has been done by the Post Office), then the employer can be persuaded by the business case of job retention or return to work. However, acceptance of the argument will depend on whether internal accounting procedures allow for costs to one department to be off-set against gains to another.

Exploration of the link between performance-related pay bonuses and sick leave helps to identify internal obstacles to job retention. As an example, the HSE has recently investigated complaints at the CoSteel plant that the company calculated bonuses on the basis of the amount of sick leave taken by each team at the plant in a month. If an employee takes one day off in a month, all other members of the team will lose half their bonuses.²¹⁶ In this climate, each team member is encouraged to pressure other members not to take time off. It could be argued that such a link between sick leave and performance-related pay will encourage team members to look after the health of other members and thus support job retention but it is more likely to dissuade any team from accepting members who require the relief of sick leave.

V.9 LINKS WITH EMPLOYMENT POLICY OBLIGATIONS, RECOMMENDATIONS AND INCENTIVES

V.9.1 Enterprise compliance with disability employment obligations and agreements

Although larger enterprises appear to be complying with the spirit of the DDA, research has, so far, only identified paper policies and self-reported actions. The TUC²¹⁷ has concerns about the use of loopholes for employers in adhering to the spirit of the DDA and notes that it is referred to as the 'Bigot's Charter' in some quarters. For example, discrimination can be 'justified' in many cases by the employer (sections 5.27-5.28) if they have 'material and substantial reasons, taking into account their duty to make reasonable adjustments'. The guidance notes on reasonable adjustment use the word 'easily' in providing examples of reasonable accommodation.²¹⁸ The concept of 'reasonable' adjustment also depends on the financial position of the employer. The TUC was also concerned that the DDA lacked enforcement and stated that 'one of the best ways to kill a civil rights concept is to pass a law and not enforce it'.²¹⁹ The new government's commitment to establish a disability rights commission was welcomed.

In considering the impact of the DDA across employment sectors and establishments, it must be noted that 96% of employment establishments in the UK employ less than 20 people and account for 20% of the national workforce²²⁰. The sector spread of the DDA is also limited by the exclusion of certain occupations, such as military and paramilitary forces, which historically are well overdue for cultural change and disability awareness. The 20 employee threshold is under review, as are excluded occupations.

V.9.2 Congruence between enterprise strategies and external practice recommendations and standards

In the face of the complexity of the DDA, employers are recognising that they can take one of three responses. First, they can do nothing and hope they evade prosecution for discrimination. Second, they can be minimalistic and try to comply with the DDA. This approach may succeed but, because of the difficulties in interpreting concepts such as reasonable adjustment and justification for discrimination, it is fraught with difficulty and may lead to errors and Industrial Tribunal cases. The third is to adopt a best practice approach.

In recent years, the 'business' case has been the focus of arguments to employ and retain disabled workers. The business case relies on the following perceived, but debatable, financial advantages of retaining disabled workers²²¹:

- Most disabled workers are reliable and trustworthy, grateful for employment and likely to take the same or less days sick as other workers.
- Supporting disabled workers is less costly than dismissal when there is a possibility of civil or criminal action by the aggrieved worker.
- Flexible routines required by the disabled worker may lead to profitable innovations in human resource management in other cases.
- Disabled workers are more able to align the company's possible market expansion into services or equipment for disabled, ill or injured customers.
- The enhanced corporate image resulting from disability-friendly job retention policies may be visible to customers and governments and result in increased patronage and government contracts.
- Co-workers will be confident that the employer will accommodate their illnesses, injuries and disabilities. This may be reflected in higher overall job satisfaction, and may lead to greater commitment and productivity and less absenteeism.
- The enterprise will save the costs involved in recruiting, selecting and training a replacement worker if the dismissal of a disabled worker is not convenient to the natural attrition or downsizing strategy of the enterprise.

Prior to the development of this argument, many employers believed it was their social responsibility to support their workers through illness and injury. This simple argument is now absent in the UK, to the point where financial advisors to enterprises dissect the cost-benefits of each job retention programme before committing themselves to the support of their disabled workers.²²²

The weakness in pursuing the business case too vehemently is that the reverse argument, namely that job retention should not be attempted if it is not financially beneficial to the firm, conflicts with the social responsibility argument. Employers are left confused in the choice of criteria to apply to their job retention decisions. This disjunction may be overcome by developing the 'diversity' argument into an inclusive employment strategy (see V.1.1). The subsequent richness of opinions, values, abilities and perspectives may be profitable to the firm; in addition, such a programme represents a social compact with the local community. The value of the diversity strategy lies in its visibility and coverage, which makes it easier for the human resource function to promote and operate it.

Inter-sectoral differences

Enterprise strategies differ greatly. Empathetic and proactive strategies to retain disabled workers are visible in the same sectors which are renowned for their negligence of health and safety and exploitation of workers. The benefits of the best practice enterprises in these sectors is that they demonstrate that retention strategies are achievable in sectors previously thought to be dominated by destructive corporate cultures. For example, the retail sector, known for its overuse of contingent workers, finds Marks and Spencer leading by example with active support for ill, injured or disabled employees; Oldham NHS Trust provides innovation among NHS trusts -

a sector targeted for a crackdown by the HSE; Midland Bank provides best practice in the banking sector which is currently moving swiftly to downsize and place staff on zero-hours contracts. This suggests that individual enterprise factors such as managerial commitment and organisational culture determine effort rather than sectoral factors in this area.

Access to medical records and the DDA

An interesting view in determining the reasonableness of workplace adjustments under the DDA is that the employee needs to be seen to be co-operating with the employer in adjusting the workplace. Employers can argue that the employee's action in not providing the employer with access to relevant medical records is obstructive. In our opinion, it would be useful for medical information to be reorganised so as to provide enough information for adaptations to be considered, while still maintaining confidentiality about sensitive details concerning the disabled worker's condition.

V.9.3 Ways in which employment and labour market policies impede or facilitate enterprise-led work adaptation programmes

European Union law

When implemented, the EU Working Time Directive will be of particular use to disabled workers whose job is jeopardised through health issues which are aggravated by shift work or a lack of rest breaks. The Directive requires, amongst other things, that: where an employee suffers health problems recognised as being connected with night work, the employee should be transferred to day work where possible; night workers should be provided with free health assessments; if the work at night involves heavy physical/mental strain then employees in such work should work only a maximum of eight hours per night.²²³

Some enterprises are already adapting their shift work patterns in line with EU law. For example, Ilford Photographic Chemicals has changed its work patterns after staff complained that the 12-hour shifts were causing ill health and that the two-day changeover between shifts was not long enough for recovery.²²⁴

V.10 ENTERPRISE STRATEGIES AND BENEFIT/COMPENSATION PROGRAMMES

V.10.1 Effects of the availability and level of out-of-work benefits on enterprise recruitment and dismissal policies

It is commonly assumed that, because of the very existence of insurance-based incapacity benefits, an enterprise has little or no compunction about 'letting go' of an employee whose capacity to do the job is affected by disability, injury or ill health. There is, however, little research to validate this assumption. The level of incapacity benefit is low compared with earnings (not earnings-related) and there may be a contrary pressure on more magnanimous employers to avoid releasing employees to a substantially reduced standard of living; this assumption is rarely stated and also untested. The absence of direct wage subsidies - other than through Supported Placements, which as yet are rarely used for job retention, and the Job Introduction Scheme - may make it difficult for an employer to retain a less productive employee.

Permanent health insurance packages have been used to pressurise employees into giving up employment, particularly in enterprises seeking to reduce their workforce. The level of benefits is likely to influence an employee to choose retirement at the onset of a disability which affects their employment.

Private occupational pension schemes often provide temporary or 'bridging' pensions for members who retire before state pension age. The rules differ between insurers and can be related to ill health or redundancy or be varied at the employee's request.²²⁵

V.10.2 Enterprise responses to in-work social security benefits

Enterprises seeking to reduce the wage costs of part-time workers commonly offer employment at below the national insurance threshold of 16 hours per week. As the threshold for DWA is itself set at 16 hours per week, there is little incentive for enterprises looking for part-time workers to accommodate potential recipients of DWA.

In-work occupational health cover

There is an interesting paradox in that, although occupational health insurance (OHI) is marketed to enterprises on the assumption that such schemes will lower absenteeism rates, in practice employees may be using this coverage to take time off work for minor operations, dental work and other consultations.²²⁶

V.10.3 The co-ordination by benefits agencies and enterprises of disabled workers' transition from benefits support to waged income

There is no evidence of co-ordination between the benefits agency and enterprises, other than through paper transactions.

V.10.4 Co-ordination of the benefit-wage package by benefits agencies and enterprises

Continued eligibility for the DWA requires 26-weekly assessments, which generally combine a self-assessment and a supporting medical opinion. There is no formal co-ordination between employers and the benefits agency in supporting or rejecting continued claims for the DWA. Eligibility for DWA is on the grounds of 'disadvantage in getting or keeping work' and no reference is made to the type of work. In comparison, private occupational health insurers are able to coordinate benefits programmes with the disabled worker's employer and to cut payments to workers whose condition allows them to resume employment.

The lack of co-ordination has prompted the TUC to move into providing a linking role between agencies, insurers and enterprises.

Occupational health care providers

The Association of British Insurers (ABI) is currently compiling a database on disabilities and related risk which will be used by its members in assessments of disabled workers.²²⁷ This segmentation of the disabled population

will lead to differentiated coverage and premiums for groups of disabled workers in UK enterprises in the near future.

Two other current strategies being pursued by occupational health care insurers are of concern. First, there is evidence that insurers have introduced an excess on claims (a cost-shift to the employee) and that this excess prevents small or frequent claims being made. This in turn discourages disabled workers from seeking early intervention from the fund. A recent health care survey reported that 31 per cent of insurers in this area had introduced this excess. Moreover, 11 per cent have psychiatric cover exclusions.²²⁸

The second strategy of the occupational health care insurers involves using the DDA protection of dismissal provisions to encourage employees to identify their health needs to the insurer and enterprise. In our opinion, insurers significantly overestimate the degree of protection and coverage of the DDA. This provides a false sense of security to disabled workers in enterprises where the culture is not naturally supportive of disability and where the insurer can subsequently raise the premium to the enterprise on the basis of its disability and illness rates.

V.10.5 Opportunities for disabled employees to join, self-fund or top-up workplace health benefits and pension plans

The low coverage of PHI schemes, including for disabled workers with atypical work activities, limits the opportunities for many workers to rely on workplace health benefits. The Association of British Insurers, however, encourages employers to include disabled workers in their occupational health schemes, noting that 'disabled persons, whose propensity to take ill-health retirement or die in service is not materially higher than for other members, must be admitted to the scheme as normal'.²²⁹

The rights of disabled workers under the DDA to pensions and other benefits is complicated. A law bulletin notes that 'there is no duty to make reasonable adjustments in respect to occupational pensions, sick pay schemes and similar benefits relating to arrangements in respect of termination of service, retirement, old age or death, accidents, injury or sickness, invalidity, or any other prescribed matter'.²³⁰ In fact, less favourable treatment may be justified on the grounds of cost. Disabled workers can even be required to pay the same contributions as other employees despite being entitled to lesser benefits.

Joining a PHI or occupational pension plan is only the first step for such schemes to be useful to disabled workers. Eligibility requirements for benefits differ greatly and few schemes encourage an active job retention or return to work strategy.

A recent survey of retirement of the grounds of ill health found that over half of the organisations had a minimum length-of-service or age requirement; only 28 per cent of organisations had a length-of-service qualifying period (of between one and five years).²³¹ The survey used definitions relating to work activities that had been applied in an earlier survey by the National Association of Pensions Funds. Twenty-five per cent of organisations used a definition based on the worker's 'inability to do any job at all' while 53 per cent applied the definition of being 'unable to do his/her normal job'. In our opinion, disabled workers may find themselves performing menial jobs in the enterprise and not be able to take advantage of occupational health insurance to see them through a period of rehabilitation or re-training.

V.11 LINKS WITH EMPLOYMENT SUPPORT AND REHABILITATION SERVICES

V.11.1 Enterprise response to externally funded support and advisory services

Section V.9.2 considered the multiple and contradictory arguments for implementing job retention programmes that are espoused by different support and advisory agencies or associations.

There may be a mismatch between the needs of clients supported by external agencies and enterprise workforce requirements. Table V.6 shows the problems that people with impairments perceive as influencing working life. The problems correlate more with flexibility at work and flexible human resource practices than with the provision of special adaptations, devices or communication support. It suggests that flexible workloads, working hours and rest breaks would do much to accommodate the special needs of disabled people.

Table V.6: Perceived effect of disability on working life

	<i>Always a problem %</i>	<i>Sometimes a problem %</i>
cannot work more than 30 hours a week	23	8
has to take 20 or more days a year off work	20	8
has to take extra rests at work	16	17
needs help from someone to do the job	6	12
needs special equipment, aids or adaptations to do the job	9	6
cannot do as much work as other people without health problems	27	17
has difficulty communicating with work colleagues	9	9

N=700 PACT clients

Source: Beinart, 1997.

These findings are supported by a study of former Invalidity or Incapacity Benefit (IB) recipients who are now ineligible for the benefit due to the tighter 'all work' functional ability tests.²³² This study highlights the fluctuating conditions of disabled workers. For example, eight per cent of the 1,225 former IB job seekers said they could never work a 7 to 8-hour day and 21 per cent said they could sometimes. Furthermore, 18 per cent of the sample said they could only sometimes work a full five-day week and seven said they could never. Moreover, about 35 per cent said they sometimes require several extra rests during a full working day, whereas 16% said they always needed these rests.

The results of both these studies point to the need for flexibility at work in the hours worked and the timing of rests during the day. The fluctuating conditions of disabled workers require that such rests and hours need to

provided in a flexible but irregular way, rather than being implemented in a standardised form. This is difficult for many enterprises to implement as a policy, as it could potentially be abused. However, some enterprises are allowing workers to take sick leave in small time periods (for example, a morning or afternoon) rather than requiring workers to take a whole day off work for a condition or illness requiring no more than an extended recuperative rest break during a working day.

Job coaches

Job coaches provide a link between an enterprise and external support services which is worthy of more consideration. Further use of job coaches would be welcomed by some enterprises in the UK. In evidence to the House of Commons Social Security Committee on Incapacity Benefits, the Employers' Forum on Disability stated that:

job coaches offer a service which is highly regarded by both employers and people with disabilities. They help the employer to minimise the potential costs and disruption to routine created when they employ someone who requires additional support and/or training. Job coaches can ... provide the individual's colleagues with training and support; provide on-the-job training and retraining as the individual's needs change or the job changes over time.²³³

There are indications that organisations using job coaches are those whose infrastructure is more costly to maintain in other ways. NHS Trusts are thought to use job coaches as they reduce the costs associated with in-house programmes. It should be noted that job coaches are still almost exclusively used for entry or re-entry to employment.

The fact that a job coach is present within the workplace may provide opportunities for dialogue with management on strategies connected with other disabled workers at the site. In our opinion, this opportunistic relationship is potentially valuable to both the enterprise and the support service. An alternative view is that reliance by employers on job coaches allows the former to avoid both management and social responsibilities.²³⁴ The funding of job coaches is itself problematic.

V.11.2 Co-funding and partnership between enterprises and other agencies

There is often poor co-ordination between enterprises, disability organisations, government departments and insurers over employment support and rehabilitation services, with a resulting over-delivery of services in certain areas and gaps in others. The complex inter-relationship between these various bodies is currently very difficult to manage within the UK employment environment. It is hoped that the National Disability Development Initiative (see III.6.1) will help to develop programmes to simplify this process.

Cunningham's study on return to work activity in 77 enterprises noted the reliance on internal non-specialist staff to manage and advise on return to work efforts. Only 19 per cent of the enterprises in the study used rehabilitation specialists, more than three-quarters of whom were external to the enterprise. Only 21 per cent used ergonomists, while 12 per cent used a disability manager.²³⁵

Enterprise-insurer relationships

In an interview with the marketing director of a major UK insurer of occupational health schemes, it was noted that much of the insurance risk in these schemes (80 per cent) was handed on to a few major re-insurers in the UK.²³⁶ This strategy removed the primary insurer from any relationship with the enterprise in relation to collaborating to reduce insurance claims by instigating proactive workplace strategies.

In a longitudinal study over five years on the use of occupational pension schemes as an avenue for retirement on the grounds of ill health, it was found that 15 per cent of people in such schemes took this route. The research report argued that occupational pension schemes are used to 'medicalise' job dissatisfaction and that enterprises preferred this 'ill-health retirement' route rather than the use of redundancy programmes. Musculoskeletal problems and stress were often cited as reasons for retirement on the grounds of ill health; however, the decision to award retirement benefits was often based on unclear or inconsistent criteria.²³⁷

V.11.3 Opportunities and barriers to the effective co-ordination of external support services and enterprise programmes

The effective co-ordination of external support services and enterprise programmes is impeded by the complex multi-agency approach in this area. This often leads to ineffective, inefficient use of resources. It is hoped that the National Disability Development Initiative (III.6.1) will resolve some of these difficulties. The current problems were reported in the Windsor Consultation, which was conducted by the Employers' Forum on Disability and sponsored by the Department for Education and Employment and the Camelot Group.²³⁸

Disability leave

The late intervention of vocational rehabilitation services in response to the deteriorating health or disablement of existing employees is an issue for rehabilitation professionals. The ability to gain access to disabled workers while they are still in employment, and to use this as an opportunity to discuss job retention strategies with both the employer and employee, is severely limited due to the limited provision of sick leave.²³⁹ Vocational rehabilitation counsellors can use the period of disability leave (as piloted in some companies) to gain access to workers and adapt the workplace or retrain the worker for a position in the enterprise.

V.11.4 Opportunities for and barriers to disabled workers' co-ordination of their workplace support

Use of personal readers, signers and other attendants at work

Disabled workers who bring personal attendants to the workplace need to be aware that they are introducing another person into the workplace and that this person requires space, freedom from harassment and an equally high quality of working life as is afforded to any employed person. The perception of this person by co-workers and their accommodation of the person into working life can pose barriers to the use of attendants at work. Several issues will need to be adequately resolved, including the attendant's access to confidential records and meetings.

Personal aids and adaptations

Enterprise policy toward the use of personal computer equipment (for example the introduction of computer viruses on the IT system), insurance cover for damage to such equipment and aids, and the inspection of personal electrical equipment and physical devices by workplace safety inspectors may obstruct the use of such equipment on site.

Duty of care

The law is unclear about an employer's duty of care to personal assistants, especially when the attendant is co-funded by the employer, insurer and a public agency. Attendants who are funded by a single source will be covered by their employer's occupational injury insurance, whereas co-funded assistants may fall between the enterprise's public liability cover and the employer's and funder's cover.

V.12 LINKS WITH SERVICES FOR ADAPTATION OF WORK AND WORKPLACE

V.12.1 Enterprise response to external services to undertake adaptations

Effort and awareness

In the survey by Cunningham²⁴⁰ of 77 enterprises and their return to work programmes, half had made some adaptations (with 52 per cent of these using the Access to Work scheme) and a further 12 per cent intended to do so. Sixty-three per cent of those providing aids and adaptations had contact with the PACTs, with three per cent intending to do so. The survey supported earlier research which suggested poor awareness by employers of the government programmes available.²⁴¹ The Executive Director of the Employers' Forum on Disability noted that many employers were unaware of the availability of support and that those who were aware of these services found the 'red tape' to be exhausting.²⁴²

Effects of adjustment on co-workers

An interesting aspect of the DDA (section 6.4) is that the effect of workplace adjustments on co-workers is considered when determining the reasonableness of such adjustments. We would speculate that expensive technical support may unfairly boost a disabled worker's productivity, prevent co-workers from carrying out their duties effectively, or reduce the quality of their working life (by taking up space and resources normally available to all workers).

V.12.2 Arrangements to assist enterprises with purchase of external services

The Access to Work scheme has been described in section I.2.3.

Occupational health insurance

The minority of workplaces which are covered by occupational health schemes do provide a range of adaptations under this cover. These have a limit on expenditure and may be supplemented by the disabled workers themselves or by the enterprises. For some enterprises and disabled workers, a cheaper form of occupational health cover, a hospital cash plan, is available. The hospital cash plan works like a voucher scheme to gives

members a fixed sum to spend each year on aids and medical appliances (and also covers home help, stress counselling, homeopathy, physiotherapy etc).²⁴³

V.12.3 The match between available services and user requirements

Relationships with PACTs

The focus by PACT staff on cost containment in the provision of aids and adaptations can create friction with the enterprise when this leads to conflicts between a client, the enterprise and PACT staff. In one case, even though the enterprise was willing to cover the additional 20 per cent cost of the ATW equipment, the PACT staff sought to reduce the quality of the adaptation. In this case, it was felt that the training provided to PACT staff was insufficient and their current attitude was likely to alienate both enterprises and disabled workers.²⁴⁴

ENDNOTES

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- ¹⁵⁶ Dench *et al.*, 1996.
- ¹⁵⁷ *Equal Opportunities Review*, (EOR) 1997b.
- ¹⁵⁸ Institute for Personnel Development, 1996.
- ¹⁵⁹ *Ibid.*
- ¹⁶⁰ Graham Shaw, London Enterprise Agency, personal communication, 19 June 1997.
- ¹⁶¹ *Ibid.*
- ¹⁶² Honey *et al.*, 1993.
- ¹⁶³ Poole, 1997.
- ¹⁶⁴ Dench *et al.*, 1996.
- ¹⁶⁵ *Ibid.*
- ¹⁶⁶ Platt, 1997.
- ¹⁶⁷ Industrial Society, 1996.
- ¹⁶⁸ Doyle, 1996.
- ¹⁶⁹ Bunt (1993) cited in James *et al.*, 1997.
- ¹⁷⁰ Bruyère, 1996.
- ¹⁷¹ CBI, 1996.
- ¹⁷² Dench *et al.*, 1996.
- ¹⁷³ Department for Education and Employment, 1997.
- ¹⁷⁴ Interview with the marketing manager of a large UK PHI insurer,
- ¹⁷⁵ Woodhams and McGoldrick, 1996.
- ¹⁷⁶ Cunningham and James, unpublished draft.
- ¹⁷⁷ Telephone interview with Dr John Ballard, editor of *Occupational Health Review*.
- ¹⁷⁸ Bain, 1997.
- ¹⁷⁹ EFILWC, 1996.
- ¹⁸⁰ BECTU union news report, 8 October 1997.
- ¹⁸¹ HSE, 1996.
- ¹⁸² Income Data Services (IDS) 1995.
- ¹⁸³ UNISON 1997.

- ¹⁸⁴ James *et al*, 1997.
- ¹⁸⁵ UNISON, 1997.
- ¹⁸⁶ Highley-Marchington & Cooper, 1997.
- ¹⁸⁷ HSE, 1996.
- ¹⁸⁸ New legislation in the form of The Health & Safety (Young Persons) Regulations 1997 stipulates that employers should carry out risk assessment before recruits aged 18 or under start work.
- ¹⁸⁹ Cunningham and James, 1997.
- ¹⁹⁰ Honey *et al.*, 1993.
- ¹⁹¹ Duckworth, 1995.
- ¹⁹² Guidance notes on a three year action plan to promote equality of opportunity for disabled people in the Ministry of Defence.
- ¹⁹³ Disability Matters 'A Guide to Best Practice in the Metropolitan Police'.
- ¹⁹⁴ Murphy, 1996, p.103.
- ¹⁹⁵ Winyard, 1996.
- ¹⁹⁶ Supported by the European Commission TIDE programme (Telematics Initiatives for the Disabled and Elderly).
- ¹⁹⁷ Home Office Partnership, 1997.
- ¹⁹⁸ Murphy, 1996, p.105.
- ¹⁹⁹ Cunningham, 1997.
- ²⁰⁰ Ibid.
- ²⁰¹ Erens and Ghate, 1993.
- ²⁰² Ibid.
- ²⁰³ Croner, 1997a.
- ²⁰⁴ Doyle, 1996, p. 29.
- ²⁰⁵ Telephone interview with Simon Pickvance, 4.11.97.
- ²⁰⁶ EFILWC, 1996.
- ²⁰⁷ TUC, 1997.
- ²⁰⁸ Duckworth, 1995.
- ²⁰⁹ According to the Human Resource Consultants at Towers-Perrin.
- ²¹⁰ Interview at Towers-Perrin London Office, 24 September, 1997.
- ²¹¹ Pickvance, 1996.
- ²¹² Bruyère and James, 1997.
- ²¹³ Pickvance, 1996.

- ²¹⁴ Doyle, 1996.
- ²¹⁵ Croner, 1997c.
- ²¹⁶ Overell, 1997.
- ²¹⁷ TUC, 1996.
- ²¹⁸ Majid, 1997.
- ²¹⁹ TUC, 1996, citing Mary Johnson, American disability activist.
- ²²⁰ Cited in Majid, 1997.
- ²²¹ Confederation of British Industry, 1996.
- ²²² Interview with Marketing Manager of large UK occupational health insurance provider.
- ²²³ Croner, 1997a.
- ²²⁴ Bloom, 1997.
- ²²⁵ IRS, 1995.
- ²²⁶ 'Healthy Scepticism', letter to the Editor, *People Management*, 11 Sept 1997.
- ²²⁷ ABI, 1996.
- ²²⁸ Hogg Robinson, 1997.
- ²²⁹ ABI, 1996, clause 6.7.
- ²³⁰ Croner, 1997d, p 12.
- ²³¹ IRS Employment Trends 581, 1995.
- ²³² Birkin and Meehan, 1997.
- ²³³ Minutes of the House of Commons Social Security Select Committee, col 69, session 96/97.
- ²³⁴ Telephone interview with Alain Rialland, Rempoy, 26 November 1997.
- ²³⁵ Cunningham, 1997.
- ²³⁶ Marketing manager of Guardian Royal Exchange, Edinburgh.
- ²³⁷ Poole, 1997.
- ²³⁸ Employers Forum on Disability, 1996.
- ²³⁹ Paschkes-Bell, 1997.
- ²⁴⁰ Cunningham, 1997.
- ²⁴¹ Morrell, 1990.
- ²⁴² Interview with Susan Scott-Parker, Executive Director, Employers' Forum on Disability, 24.9.97.
- ²⁴³ Westfield Contributory Health Scheme, marketing brochure.
- ²⁴⁴ Paschkes-Bell, 1997.

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