

Disability Disclosure: a case of understatement?

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Word count 5,115

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Abstract

Limited companies have a responsibility, under the Companies Act 1985, to report upon their relationship with their employees, but previous research (Day and Woodward, 2004) suggests that although the requirements of the Act cannot be described as onerous, there is a large degree of non-compliance by the largest listed UK companies. Additionally, information in respect of disabled persons was required following the issue in 1980 of a Statutory Instrument (SI 1980/1160) which introduced the requirement for larger companies to disclose information regarding the employment, training, career development and promotion of disabled persons. This requirement was later incorporated into the 1985 Companies Act. The fact that the Disability Discrimination Act of 1995 made it unlawful for employers to discriminate against the employment or advancement of disabled persons should perhaps suggest that this dimension of employee reporting would have achieved greater compliance than that found for general employee reporting. In order to investigate if this is indeed the case, the present study uses content analysis to examine the extent of compliance by analysing the Directors' Reports of a sample of large listed companies in 1995 and 2000. Also considered are positive actions taken by the companies as evidenced by their membership of organisations concerned with disability, and compares the disclosures made in the annual report with such actions. The findings demonstrate decreasing compliance with CA requirements over the period studied despite evidence of increasing corporate action and commitment to the disabled through memberships of organisations such as the Employers Forum on Disability.

Disability Disclosure: Changes and Reality

Introduction

In the UK there are 8.7 million disabled persons, of whom 5.2 million are of working age (Employers Forum on Disability, 2002). This represents 18% of the working population and yet Grewal *et al* (2002:8) found that 'some [disabled] people found employers to be very supportive, accommodating and flexible, whilst others found it difficult to get the necessary assistance or to be given the right type or level of work'. Significantly, the majority of disabled people (70%) who are economically active incurred their disability during their working lives (Employers Forum on Disability, 2002).

Perhaps the importance of the potential contribution to the economy of persons with disabilities was a factor in the decision to require organisations to disclose information about their employment and subsequent treatment (introduced in 1980) and more recent legislation has made it illegal to discriminate against disabled persons with the government putting in place institutional arrangements to investigate cases. The purpose of this study is to consider the extent to which large UK companies complied with the disability disclosure requirements, enshrined in the 1985 Companies Act, in their Annual Report and Accounts in 1995 and 2000 and to investigate whether such disclosures in fact reflect corporate commitment.

In order to situate the study it is necessary to consider the rights of disabled persons, as far as employment is concerned, and a brief overview of these rights and their relevance to corporate reporting and corporate governance is initially provided. In addition to legislation, there are governmental and non-governmental initiatives designed to improve employment opportunities for the disabled and these are also described. The empirical part of the paper examines the degree of compliance by the largest UK companies with the disability disclosures required by law and considers the role of membership of disabled employment organisations as a possible demonstration of commitment to the disabled.

The Legal Framework Guiding Employment of Disabled Persons

Following the 1944 Disabled Persons (Employment) Act there were attempts to utilise a quota system for the employment of disabled persons with breaches being criminal offences for which employers could be imprisoned, but it appears that this never actually happened despite infringements (Fordham 1998). The 1944 provisions were strengthened in 1995 by the Disability Discrimination Act, which made it unlawful for an employer to discriminate against a disabled person under s4 (1):

- a) in the arrangement which he makes for the purpose of determining to whom he should offer employment;
- b) in the terms on which he offers that person employment; or
- c) by refusing to offer, or deliberately not offering, him employment.

It was also deemed unlawful for an employer to discriminate against a disabled person already employed under s4 (2)

- a) in the terms of employment which he affords him;
- b) in the opportunities which he affords him for promotion, a transfer, training or receiving any other benefit;
- c) by refusing to afford him, or deliberately not affording him, any such opportunity; or
- d) by dismissing him, or subjecting him to any other detriment.

Company Law, Disabled Persons and the role of the Annual Report in communicating (social) information.

The use of the annual report as a medium for communicating non-statutory information is well accepted, and research has shown that in the area of social reporting this is particularly appropriate (Gray *et al* 1995). Motivation for such disclosure may be to improve the image of the organisation, which could involve signalling (Morris 1987), avoiding social conflict (Guthrie and Parker 1990) or legitimisation of corporate action (see for example, Parsons 1956, 1960; Shocker and Sethi 1974; Dowling and Pfeffer 1975; Wilkinson 1983; Woodward *et al* 1996). Such research generally shows that in the absence of statutory requirements, voluntary disclosure is often used strategically by the organisation and an interest in demonstrating "good" corporate governance may also be a factor. Corporate governance can be seen to include not only complying with legislation and codes of practice but also with the provision of sufficient information to stakeholders to allow them to assess organisational performance. The examination of social disclosures in this study is for the purpose of assessing whether the disclosure represents the underlying reality of corporate action and belief.

Annual reports are intended to act as an input to user decision models, in fact this is what gives them the qualitative characteristic of relevance for users (ASB 1999) and from the time of the Corporate Report (ASSC 1975) employees have been recognised as a legitimate corporate stakeholder. For employees, decisions refer to their personal investment of human capital and the annual report may be instrumental in allowing them to 'assess the security and prospects of employment' (ASSC 1975:21). More recently the Global Reporting Initiative (GRI 2002) suggested disclosure of '...equal opportunity policies or programmes as well as monitoring systems to ensure compliance and results of monitoring' (LA10) and AccountAbility (ISEA 1999), in its AA1000 framework, suggests stakeholder engagement and 'specialist methodologies (of engagement) to address issues of.....disability'.

Under the 1948 Companies Act, the Directors Report had few statutory requirements other than a review of the state of the company's affairs, the amount (if any) required for a dividend and the amount proposed to be carried to reserves. The Companies Act of 1967 required disclosure of employee numbers and aggregate remuneration. In 1980, the issue of Statutory Instrument (SI 1980/1160) introduced the requirement for larger companies to disclose information regarding the employment and subsequent treatment of disabled persons and this was incorporated into the 1985 Companies Act for companies with an average number of UK employees in excess of 250. The specific disclosures in the Director's Report required disclosure of the company's policies for:

- a) the employment of disabled persons;
- b) the continued employment and training of persons who become disabled whilst employed by the company;
and
- c) the training, career development and promotion of disabled persons. (Ch6, Sch7 S9)

There would appear to be a close correlation between the Disability Discrimination Act's requirements and the disclosures under the Companies Act, both in the area of initial employment and subsequent treatment of disabled persons. Although the CA mentions specifically those persons who become disabled at work, the Disability Discrimination Act provisions would appear to cover that category of employees in the same way as those who are disabled when recruited.

As institutional support for this legislation, the Government introduced the Disability Rights Commission Bill in 1999 and it received Royal Assent in the same year. The Act set up the Disability Rights Commission (DRC) as an independent body whose responsibilities include carrying out formal investigations into how disabled people are treated in particular organisations or sectors. From current perspectives the replacement of the Disabled Persons (Employment) Act by the DRC seemed better in that the use of tribunals and conciliation seemed preferable (Fordham 1998). As opposed to the criminalisation of infringements under the 1944 Act, the use of a less formal approach may be a reflection of both the government and corporate initiatives, which are described in the next section.

Disabled persons' employment initiatives

Recent years have seen several initiatives designed to improve the employment opportunities available to disabled persons. These initiatives have resulted in the formation of both governmental and non-governmental associations and it could be suggested that corporate support for these initiatives demonstrate commitment to the ideals of fair employment conditions for disabled persons. This proposition will be investigated in the empirical analysis that follows and a brief overview of the structure and function of such initiatives is now provided.

- **Employers' Forum on Disability**

The Forum, set up in 1991, is both funded and managed by employers and had approximate 370 members in both commercial and public sector organisations in 2000, representing over 22% of the UK workforce. In 1992 the Forum launched The Agenda on Employment with the support of 75 member companies which provides ten action points to assist organisations to structure policy and practice to reinforce long term strategic change and to help develop action (see Appendix 1). The general benefits of membership include access to specialist guidance on the Disability Discrimination Act 1995, the provision of guidance and advice on best practice, and the latest information on agencies and support services. Further benefits are that members can attend events and receive legal updates including summaries of Employment Tribunal Cases. In 2002 there were 24 'Gold Card' members of the Forum who pay a higher annual subscription but have access to a special series of events and the opportunity to influence the strategic policy development of the Forum (see Appendix 2 for a list of members).

- **New Deal for Disabled People**

The New Deal for Disabled Persons is a government initiative of the Department of Work and Pensions using 'Job Brokers' (often charities) who offer help and support to match the skills and abilities of disabled persons to the needs of employers. By 2002, over 20,000 people had registered with Job Brokers and in excess of 4,000 were helped back to work (New Deal 2002).

- **Employment Opportunities**

Employment Opportunities is a charity whose objective is to help people with disabilities find and retain work. Additionally, the charity provides support and advice to employers on disability and employment matters. Ten City of London employers (Bank of England, BP, CEGB, IBM, Midland Bank, P&O, Price Waterhouse, Sedgewicks, the Stock Exchange and Unilever) founded the charity in 1980. It operates on a national basis and in 2000 helped over 1600 people with disabilities (Employment Opportunities 2002).

Data sample and method of analysis

The initial purpose of this study is to identify the degree of compliance with the Companies Act 1985, as amended 1989, requirement to disclose in the Directors' Report the company's policies for:

- a) the employment of disabled persons;
- b) the continued employment and training of persons who become disabled whilst employed by the company;
and
- c) the training, career development and promotion of disabled persons. (Ch6, Sch7 S9)

and is based upon a study of the Annual Reports of the UK FTSE 100 companies from both 1995 and 2000. This five year period has been selected in order to identify any changes in disclosure practice following the passing of the Disability Rights Commission Act 1999 based upon the premise that companies might see the presence of the regulatory body set up under the act as a reason for changing their actions and subsequent disclosure.

The analysis looked initially at whether there was any reference to the disabled in the Directors' Report. Subsequent analysis included the entire Annual Report and Accounts of the company as there is some evidence that suggests

certain companies interpret compliance as inclusion of the information anywhere within the Annual Report (Day and Woodward, 2004). All other communication media such as the internet and ancillary reports were excluded from the analysis. Further, the study was limited to large companies for two main reasons. Firstly, the ready availability of the Annual Reports, and secondly, recognition that whilst every economic entity has a responsibility to the community which it serves, the economic and social importance of its activities will normally be greater the larger its size (ASSC 1975) and therefore compliance with statutory requirements is potentially of more significance.

Content analysis is frequently used in corporate social reporting research (Unerman 2000) with the number of words or amount of space devoted to a particular topic being quantified and taken to be representative of the importance placed upon issues by the reporting organisation with Stone *et.al.* (1966:5) suggesting it is 'a research technique for making inferences by systematically and objectively identifying specified characteristics within a text'. This study employs a simplified version of content analysis to identify whether the required disclosure is simply present or absent as 'what is not disclosed can be seen as important as that which is' (Adams and Harte (1998:783). Gray *et al.* (1995:80) suggest that content analysis can take many forms with different levels of complexity, and it is important 'that definitions employed in the data collection are negotiated to achieve "shared meanings" which create the same referents in all the associated researchers'[i]. Indeed this shared meaning is similarly important for those who are reading the results of the research.

Findings

Initially an examination was made of whether any reference to the disabled was made in the Directors' Report regardless of whether or not this was compliant with the detailed requirements of the Act. Table 1 demonstrates that the incidence of such references has decreased over the period to a significant extent, and as will be seen later (table 3), even such reference is not sufficient to satisfy the requirements of the Companies Act 1985, Ch6, Sch7, S9.

Insert table 1 here

Anglo American plc is illustrative of a company whose employment policy statement in the Directors' Report makes no mention of disabled persons at all. They report only that its operating divisions are 'empowered to manage its business within the context of its own industry, and the different legislative and social demands of the diverse countries in which those divisions operate'. They go on to add that divisional managers are charged with ensuring 'Adherence to national legal standards on employment and workplace rights at all times' (Directors' Report, Anglo American Annual Report, 2000:8).

BP also failed to comply strictly in the year 2000 with the Companies Act requirements, making no mention of disabled persons in the Directors' Report. However by providing extensive information elsewhere in their Annual Report they were considered compliant against the first and third criteria. The following is an illustrative extract from their Annual Report:

'During the year, we set up two committees made up of senior executives to shape our strategy for improvement in the areas of diversity and staff development. Other initiatives used to support our employee commitments were:

- performance targets and measures for appraisal, development and training

- creation and initial implementation of our diversity strategy
- assessment and development processes for our current leaders and high-potential staff, together with the outline of a new development programme for our 'first-line leaders'
- specially designed programmes for our top leaders at some of the world's leading universities and business schools.

BP's employment policies and practices include specific requirements for compliance with the law and for the selection, training, placement and advancement of employees on the basis of merit. We are committed to supporting job and workplace structures to accommodate the needs of all employees, including disabled employees. BP was a founding member of, and provides financial support to, Employment Opportunities for People with Disabilities in the UK and similar institutions in other parts of the world' (BP Annual Report and Accounts, 2000:19)

In contrast EMI do mention disabled persons in the Directors' Report but the wording was so generalised and vague that it was difficult to evaluate what, if any, heed was taken of the requirement to provide details of their policies. They say:

'Responsibility for employment matters therefore rests primarily with each business operation under the general umbrella of EMI Group's policy and procedure guidelines.

EMI Group companies are committed to the maintenance of a work environment free of discrimination on the grounds of gender, nationality, ethnic or racial origin, non-job-related disability or marital status' (EMI Annual Report 2000:28).

Nowhere else in the Annual Report is any mention made of disabled persons and it was decided that this did not provide sufficient information to classify as compliant on any of the three criterion.

Detailed analysis of the narrative concerning the three disclosure requirements of the Companies Act is shown in Table 2 where it can be seen that compliance against each has decreased over the period and further that this decrease is statistically significant in the cases of the first and third statutory requirements.

Insert Table 2 here

When looking at overall compliance it is interesting to note, as shown in Table 3, that there is an increase in the number of companies who do not comply on even a single criterion, from just four in 1995 to seventeen in 2000. The chi-square test shows this reduced level of overall compliance is statistically significant.

Insert Table 3 here

In the year 2000 Annual Reports fourteen companies disclosed, in the directors' report or elsewhere in the Annual Report, that they were members of the Employers Forum for the Disabled. However reference to the membership list supplied by the Forum showed that 52 of the companies included in the analysis were actually members at the year-end. It may be that some companies were not members at the time that the Annual Report was completed and may account for some of the difference but it would appear that many were likely to have been members but

failed to advertise that fact. So why did the other 38 not disclose their membership? Surely something that would be regarded as positive or good news and would therefore be disclosed by a 'rational' company.

Membership of the Employers Forum on Disability could perhaps suggest increased awareness of the needs of disabled persons, and commitment by members to meet those needs. This would suggest that Forum members would be more likely to comply with regulations relating to the employment of disabled people and also to the requirement to disclose relevant information in the Directors' Report but this proved not to be the case. The reduced level of compliance over the whole sample (members and non-members) identified at first sight seems surprising but when applied to Forum members this seems even more so. Chi-square considering differences between forum members and non-members in degree of compliance shows no statistically significant differences between the two groups but it can be seen in Table 4 that more members than non-members fail to comply at all.

Insert Table 4 here

Table 5 shows that thirteen companies out of a total of 48 who were in the sample analysed in both 1995 and 2000, showed a deterioration in compliance over the period. However, of these 13, seven reported membership of a disability related organisation or the award of a recognised standard in 2000, but not in 1995. Therefore as compliance decreased during the period, so disclosure of voluntary action appeared to increase. Additionally, the level or the change in compliance during this period was not significantly different for members or non-members of organisations.

Insert Table 5 here

Conclusion

It would appear from the results of this research that companies are putting more emphasis on action rather than disclosure. It may be because companies consider that by belonging to a disability-orientated organisation they have demonstrated their commitment and this is sufficient. If this is the case it would appear that organisations are not adequately fulfilling the second element of the minimum set of conditions for organisational behaviour identified by Gray *et al.* (1996:64) where he suggests that 'The state lays down a minimum set of conditions for organisation behaviour in law [and] ...it comprises two elements: responsibility for action; and responsibility for *disclosure* about action (i.e. accountability)'. The lack of sanctions has been offered elsewhere as a contributory factor in non-adherence to other disclosures required by the Companies Act (Day and Woodward 2004) although breaches of the Disability Discrimination Act may be seen as more serious because of the higher likelihood of prosecutions, due to the presence of a regulatory body, the DRC.

Could there also be an element of stakeholder management occurring? Campbell and Slack's (2004:7) study in the area of charitable giving by companies suggests that disclosure of policy 'may serve as a basis for solicitations or other engagements'.

Reduced compliance with the law is one finding of this research, and a possible explanation may be the unwillingness to disclose unfavourable information, especially where this might indicate a less than enthusiastic response to non-discrimination which could be evidenced by the perceived paucity of quantitative data on the disabled in annual reports. On the other hand, the finding (that firms were not disclosing favourable information) is more difficult to explain. The normal motive for non-disclosure, that is in order to exploit a potential economic advantage (see for example Dye 1985) would not seem to be applicable in this case, as this is more likely to be found where commercial secrecy is a priority.

Costs and benefits are often used as a framework for examining disclosure decisions (Elliot and Jacobson, 1994) while Leftwich *et al.* (1981) believe that disclosure is about both external demands for information and internal drivers. It has been suggested that the managers of the firm as a source of disclosure decisions is an under-researched area (Gibbins *et al.* 1990) and Freedman and Stigliano (1992) consider that disclosure is a consequence of each manager's particular perception. However, in the context of environmental reporting Wilmshurst and Frost (2002) only found limited support for voluntary disclosure as a function of the values of individual managers.

Research within the framework of legitimacy theory suggests that voluntary disclosure is part of the process of legitimisation. Both Lindblom (1994) and Dowling and Pfeffer (1975) consider one of the legitimisation strategies of an organisation is to try and alter perceptions by association with symbols that have a high legitimacy status. However this would not explain the findings in this paper as 'implementation of any legitimisation strategy must involve communication (disclosure) by the organisation' (Van Der Laan 2004:7). The non-communication of such legitimisation strategies would perhaps imply a form of ex post legitimisation. In other words the actions taken by the firm may be in a defensive situation, which in the area of disability may be necessary in cases brought under the Disability Discrimination Act. This demonstrates a form of pre-emptivity in that membership of organisations promoting disability may be undertaken not from a stakeholder viewpoint, but in order to focus corporate concern and actions towards avoiding any such breach of the law.

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Appendix 1:

Employers Forum on Disability Agenda on Employment Action Points

‘equal opportunities policy and procedures

Disability will form an integral part of all equal opportunities policies and practices.

staff training and disability awareness

Specific steps will be taken to raise awareness of disability throughout the organisation.

the working environment

Specific steps will be taken to ensure that the working environment does not prevent disabled people from taking up positions for which they are suitably qualified.

recruitment

Recruitment procedures will be reviewed and developed to encourage applications from and the employment of disabled people

career development

Specific steps will be taken to ensure that disabled employees have the same opportunity as others to develop their full potential within the organisation

retention, retraining and redeployment

Full support will be given to employees who become disabled, enabling them to maintain or return to a role appropriate to their experience and abilities within the company.

training and work experience

Disabled people will be involved in work experience, training and education / industry.

people with disabilities in the wider community

The employer will recognise and respond to disabled people as customers, suppliers, shareholders and members of the community at large.

Involvement of disabled people

Disabled employees will be involved in implementing this Agenda to ensure that wherever possible, employment practices recognise and meet their needs.

Monitoring performance

The employer will monitor its progress in implementing the key points. There will be an annual audit of performance reviewed at board level. Achievements and objectives will be published to employees and in the UK annual report.’

Source: <http://www.employers-forum.co.uk/www/guests/about/empagenda.htm>, accessed 24/11/02

Appendix 2

Employers Forum on Disability Core Funders – ‘Gold Card’ Group (Dec. 2000)

Abbey National
B & Q
Barclays
BG
British Telecom
Bupa
Camelot Group
Centrica
Glaxo Welcome
HSBC Bank
Manpower
McDonald’s Restaurants
Post Office
Railtrack
Sainsbury’s Supermarkets
Scottish Power
Unum
Virgin Rail Group



Table 1: Reference made to the Disabled in the Directors report

	1995	2000	
Directors' Report	97	89	
Not mentioned	3	11	
Total	100	100	
	Pearson	.027	



Table 2: Compliance with individual statutory requirements

		1995	2000	
Employment of disabled persons policy statement	Non-compliant	5	19	
	Compliant	95	81	
	Total	100	100	
	Pearson	.002		
Continued employment and training of persons who become disabled whilst employed by the company policy statement	Non-compliant	36	42	
	Compliant	64	58	
	Total	100	100	
	Pearson	.384		
Training, career development and promotion of disabled persons policy statement	Non-compliant	19	35	
	Compliant	81	65	
	Total	100	100	
	Pearson	.011		



Table 3 Level of total compliance

	1995	2000	
0 policy statement	4	17	
1 policy statements	4	4	
2 policy statements	40	37	
3 policy statements	52	42	
Total	100	100	
	Pearson	.026	



Table 4 Compliance and membership of Employers Forum

	2000	
	Members	Non-Members
0 policy statement	11	6
1 policy statements	1	3
2 policy statements	23	14
3 policy statements	17	25
Total	52	48
	Pearson	.110

Table 5 Change in level of compliance

	Policy Statements		
	Overall	Org. Member (2000)	Non-members (2000)
Constant compliance	28	22 (58%)	6 (60%)
Improvement in compliance	7	5 (13%)	2 (20%)
Deterioration in compliance	13	11 (29%)	2 (20%)
Total	48	38	10

[i] Analysis sheets were completed independently by the joint authors and the results cross-checked for reliability. All discrepancies of coding were investigated and where necessary the categories redefined more precisely with examples.