Women and Equalities Committee inquiry: Equality at work: flexible working and disability

Response from the Women's Health at Work Network / Society of Occupational Medicine (SOM)

Last updated: 24 June 2026

Introduction to the Society of Occupational Medicine

The Society of Occupational Medicine (SOM) is the leading UK organisation for healthcare professionals with an interest in health and work. Members typically work in the field of occupational health (OH). SOM and its members work across the UK to improve participation in the workplace by disabled people. SOM is committed to working with employers and employees to promote a healthier workforce. Greater workforce participation and improved productivity are also aligned with the Government's focus on increasing growth. High-quality health and work expertise is a vital ingredient to:

- increase disabled people's employment,
- improve their wellbeing at work, and therefore
- promote economic growth by increasing workforce participation.

Introduction to the Women's Health at Work Network

Supported by SOM, the Women's Health at Work Network aims to lead the way to reduce gender disparities in workplace health with evidenced-based workplace health knowledge through an intersectional lens. More information is available here: https://www.som.org.uk/women%E2%80%99s-health-work-network

Executive summary

The Society of Occupational Medicine (SOM) and the Women's Health at Work Network welcome the Women and Equalities Committee's inquiry into flexible working and disability. Our response draws on SOM's occupational health experience, the Network's research into women's reproductive and gynaecological health conditions, and substantive legal expertise. We would encourage the Committee to take a wide view of how disability (temporary or permanent) can affect a worker's need for flexible working or reasonable adjustments.

The cultural shift has not closed the disability employment gap. Access to flexible working as a cultural norm and access to it as a formal legal entitlement are two different things. The Equality Act's reasonable adjustment duty although substantive in intent is reactive and individualised. In other words, it places the burden on disabled employees to identify themselves, navigate a complex legal framework, and assume some risks associated with disclosing their conditions or symptoms. Those least equipped to do so are most likely to benefit.

Women's health conditions present a specific and under-recognised problem. Conditions such as endometriosis, PMDD, fertility treatment, pregnancy loss, perinatal mental health, and perimenopause are frequently experienced as disabling but sit uncomfortably within the Equality Act's definition of disability. Symptoms fluctuate, diagnoses can take years, and many people are uncertain whether they qualify for adjustments or are unable to disclose. This creates a compounding barrier the current legal framework does not adequately address.

The Employment Rights Act 2025 is welcome but insufficient. The right to request flexible working still places the burden on the individual and does not resolve the contested

definition of disability or the ambiguity between Employment Rights Act and Equality Act routes. We recommend the Government introduce a concept of "temporary reasonable adjustments", clarify the definition of disability for fluctuating conditions, and place greater proactive duties on employers.

The law around reasonable adjustments is very unclear. The definition of disability, the scope of the adjustment duty, the relationship between competing legal routes, and the rules on employer knowledge are all poorly understood. This generates inconsistent outcomes and acts as a structural barrier to disabled workers. Legislative clarification and updated EHRC guidance are both needed.

Back-to-office mandates disproportionately harm disabled workers, particularly those with stigmatised or invisible conditions who have relied on informal flexible arrangements. Government guidance on return-to-office policies should make Equality Act duties explicit, and the EHRC should issue targeted enforcement guidance.

Our responses

We have responded to the questions of the inquiry most relevant to our expertise and evidence base below. For context, while SOM and the Women's Health at Work Network's work aims to support worker's health and integration into organisations, we would not present ourselves as disabled people's charities, unlike for example Disability Rights UK, Scope or Sense. Our feedback to the Committee is therefore informed by our engagement with our members and supporters, some of whom would describe themselves as disabled, and some who would perceive themselves to have a disabling condition rather than to be disabled.

In fact, this tension informs our answers, i.e. how employers respond to or support workers with a long-term or chronic medical condition (such as endometriosis or bipolar disorder) which may lead to temporary or permanent disability with impacts on a person's ability to work or need for reasonable adjustments, vs people with a permanent (and well-recognised) physical, mobility, sensory or intellectual disability (such as blindness or need for a wheelchair).

We would recommend that the Committee take a wide view of how disability – temporary or permanent – can affect a worker's need for flexible working or reasonable adjustments.

- **Why has the cultural shift since the Covid-19 pandemic towards greater acceptance of flexible working not yet had a substantial impact on the employment rate of disabled people and the disability employment gap?**

Flexible working has become more normalised since the pandemic, but as your Inquiry sets out, this has not translated into equivalent gains for disabled people. We identify two interconnected reasons.

First, access to flexible working as an informal cultural norm and access to flexible working as a formal reasonable adjustment under the Equality Act are two very different things. For many disabled workers the gap between cultural availability and practical access remains wide. We see this particularly those with conditions that attract stigma, are not visibly 'disabling', or do not fit neatly into the legal definition of disability. As such, flexible working may technically be more available. But claiming it as a disability accommodation requires employees to identify themselves as disabled, navigate a complex and poorly-understood legal framework, and risk disclosure in environments that may not be supportive.

Research on women with reproductive and gynaecological health conditions illustrates this acutely. Conditions affecting women such as endometriosis, premenstrual dysphoric

disorder (PMDD), and perimenopause are experienced as debilitating and substantially affect capacity to work. Yet employees are often unsure whether they qualify as 'disabled' under the Equality Act and therefore uncertain whether they are entitled to request adjustments. Long diagnostic delays compound this problem: an average of eight years for endometriosis diagnosis (Women and Equalities Select Committee, 2024) and twelve years for PMDD (The Pharmaceutical Journal). As one research participant put it:

> *"I haven't accessed any [workplace] support as I do not have an official diagnosis of endometriosis … That is one of the difficult things about the condition, not being able to get an official diagnosis."*
> (NCA Well Women Strategy project, see Wilkinson et al., 2023a)

Second, while the Equality Act's reasonable adjustment duty is substantive, it is also reactive and individualised. In other words, it places the burden on the disabled employee to assert their rights, rather than requiring employers to anticipate and remove barriers proactively. Even where flexible working is more widely available, this structural feature of the law means that those least equipped to navigate legal and HR processes are least likely to benefit. This includes people uncertain of their status, those facing stigma, or in insecure roles.

As such, while we recognise a cultural shift towards greater acceptance of flexible working for all, the cultural and legal picture around disability and flexible working continues to restrict access to it for disabled people or those with temporarily disabling conditions.

- **Are there differences in disabled people's experiences of flexible working across different types of disability or impairment and among disabled people with a range of other protected characteristics, for example their age, sex, and race and ethnicity?**

Yes. Our submission focuses particularly on the intersection of disability with sex, drawing on the Women's Health at Work Network's research on reproductive and gynaecological health conditions. Women's health issues are frequently experienced as disabling but can complicate definitions of disability under the Equality Act which create additional barriers to accessing flexible working.

Menstrual health conditions

Conditions such as endometriosis and PMDD are often experienced as debilitating, but symptoms fluctuate, making it difficult for those affected to feel their condition constitutes a constant 'impairment'. A similar phenomenon can be seen with mental health or neurological conditions; for instance Parkinson's Disease symptoms can vary widely between people, and change from day to day, depending on the progression of the disease and treatments applied. Long delays in diagnosis compound the problem, as employees feel they lack 'proof' and are often unaware that a formal diagnosis is not required to request adjustments. Research participants described:

> *"[endometriosis] it's not deemed as a severe situation and people don't understand how debilitating it is, so I just get on with it."*
> (NCA Well Women Strategy project. see Wilkinson et al., 2023a)

> *"I think the inconsistency with my [endometriosis] pain makes me feel like I'm less likely to be believed."*
> (NCA Well Women Strategy project. see Wilkinson et al., 2023a)

Fertility treatment

Fertility treatment is not a health condition, yet the physical, cognitive, and psychological impact of repeated cycles is described as debilitating by individuals, and they feel that it

affects them as much as disability (physical, cognitive and psychological symptoms). Because this treatment is often perceived as a choice, employees are reluctant to request adjustments, particularly where treatment may continue for years with no known endpoint:

> *"If I knew when this was all going to end, I would probably be a bit more forthright … but the problem with treatment is that I don't know how long this is going to be going on for … I feel almost like, how far can I push it?"*
> *(*Wilkinson et al., 2022*)*

> *"I was told it was cosmetic surgery, and I would have to sort it all out in my own time."*(Complex fertility journeys study, cited in Workplace Fertility Campaign Group White Paper, 2024)

Where infertility is caused by an underlying health condition, that condition may constitute a disability. Where a fertility journey extends beyond 12 months, associated mental health conditions may also qualify. However, the boundaries are unclear to both employees and employers. Further detail on the legislative gaps is available in Wilkinson et al. (2023b) and the Workplace Fertility Campaign Group (2024) paper in our references below.

Pregnancy loss
Research participants who experienced pregnancy loss described a disconnect between the workplace expectation of short-term physical recovery and the reality of extended grief and mental health impacts (Wilkinson et al., 2022; Wilkinson et al., 2023a). Where anxiety, depression, or PTSD following pregnancy loss persists for more than 12 months, it may qualify as a disability. However, the blurred boundary between grief (not a disability) and clinically recognised mental health conditions means employees rarely identify or claim entitlement to adjustments (NCA Well Women Strategy project; Complex Fertility Journeys study). That said, the forthcoming implementation of rights for women and partners to unpaid leave following a miscarriage (as part of the Employment Rights Act) will provide greater ability for affected workers to advocate for time to grieve.

Perinatal mental health
Perinatal mental health conditions, such as antenatal anxiety or postnatal depression, may or may not meet the Equality Act threshold for disability. Stigma and shame are significant barriers to disclosure and to requesting adjustments. Employees may resist identifying with a disability label in the hope that symptoms are temporary, further reducing their likelihood of accessing flexible working as a formal accommodation (Wilkinson, 2023; Wilkinson et al., 2024).

Perimenopause and menopause
Menopausal symptoms can be severe and persist for many years. However, a cultural narrative that menopause is a 'natural phase' that all women go through can undermine a sense of entitlement to support. Additionally, symptoms often affect multiple body systems so employees may not connect them to a single condition:

> *"I had taken days off work but hadn't realised the symptoms (mainly anxiety/tearfulness/extreme PMT symptoms and heavy/irregular periods) were perimenopause related."*
> (NHS context, Wilkinson et al., 2023a)

These findings demonstrate that women with reproductive and gynaecological health conditions face specific and compounding barriers to accessing flexible working as a disability accommodation, in addition to any broader barriers affecting disabled workers generally.

- **To what extent will the flexible working provisions in the Employment Rights Act 2025 benefit disabled workers and jobseekers? Are there further legislative or policy steps the Government could take to increase disabled people's access to flexible working?**

The Employment Rights Act 2025's flexible working provisions are a welcome step and will benefit disabled workers able to make use of the statutory right to request. However, we are concerned that they will not reach all the workers who face the greatest barriers, for three reasons.

First, the right to request still places the burden on the individual employee to initiate the process. For the groups identified above (those uncertain of their legal status, those facing stigma, those in insecure employment) this remains a substantial barrier the Employment Rights Act does not address. This may be possible to address in surrounding guidance, but may need further legislation to embed.

Second, there is unresolved ambiguity in the relationship between the Employment Rights Act's flexible working rights and the Equality Act's reasonable adjustment duty (discussed further below). This creates uncertainty for both employees and employers about which route to use and what protections apply.

Third, the Act's provisions do not address the contested definition of disability under the Equality Act, which continues to exclude or marginalise many people with fluctuating or 'invisible' conditions.

We recommend the following additional steps:

- Clarification of the relationship between the Employment Rights Act's flexible working provisions and the Equality Act reasonable adjustment duty (see our responses below too).
- Reform or clarification of the definition of disability under the Equality Act to provide greater certainty for people with fluctuating conditions, reproductive health conditions, and conditions not yet formally diagnosed.
- Introduction of a concept of 'temporary reasonable adjustments' in legislation or statutory guidance. This would be applicable where an experience is debilitating and affects work but may not meet the Equality Act's 12-month threshold. This would be particularly valuable for those undergoing fertility treatment, experiencing pregnancy loss, or managing fluctuating conditions. A temporary framing also encourages regular monitoring of whether adjustments remain appropriate (Wilkinson et al., 2022; Wilkinson and Mumford, 2024; Workplace Fertility Campaign Group, 2024). Certainly, while we would want workers who require flexible working or other reasonable adjustments to receive them, it serves no-one – employers or employees – to continue applying adjustments which are outdated, no longer required or no longer appropriate for the employee.
- Greater proactive duties on employers to anticipate and address flexible working barriers for disabled workers, rather than relying solely on the reactive, individualised adjustment model.

- **How clear and well understood is the law around employers' Equality Act duties to provide flexible working options and associated aids and equipment as "reasonable adjustments"?**

The law in this area is significantly unclear. This lack of clarity operates as a structural barrier to disabled workers accessing flexible working. We set out the key areas of difficulty below.

The definition of disability
Before an individual can bring a claim for reasonable adjustments, they must establish that they are 'disabled' under section 6 of the Equality Act 2010. Outside conditions that are automatically treated as disabilities, the definition is poorly understood by employees and employers alike. It is highly medicalised and focuses on impairment rather than on the treatment of the individual. Areas of particular difficulty include:

- whether there is a 'physical' or 'mental' impairment;
- whether that impairment is 'substantial' and 'long-term'; and
- whether it affects the disabled person's ability to carry out normal day-to-day activities.

In practice, disability discrimination claims frequently become entrapped in these definitional questions, leading to barriers to reasonable adjustment claims. For the women's health conditions described above, the definition is particularly ill-suited. Fluctuating conditions, conditions with long diagnostic delays, and conditions widely perceived as 'normal' or 'temporary' all sit uneasily within it.

Preliminary hurdles in reasonable adjustment claims
Even where disability is established, claimants face further unclear thresholds:

- What constitutes a 'provision, criterion or practice' (PCP) that triggers the duty. This can include requirements around shifts, attendance, and workplace presence, and has been used to challenge inflexible working arrangements. However, difficulties have arisen around the operation of an absence management policy and how flexible that has to be (General Dynamics v Carranza).
- How to establish a causal link between the PCP and a 'substantial' disadvantage suffered (Secretary of State for Work and Pensions v Higgins).

The extent of the reasonable adjustment duty
The scope of the duty is uncertain. It turns on 'reasonableness' as assessed by the Tribunal, which must reconcile two competing considerations: the effectiveness of the accommodation and the inconvenience or cost to the employer. This produces significant inconsistency across similar factual situations. Specific areas of uncertainty include:

- **How far the duty can extend in relation to other employees.** In First Group Plc v Paulley, the Supreme Court contemplated extensive steps to accommodate disabled persons even where this potentially disadvantaged others. However, in O'Hanlon v Commissioners for HMRC, the Court of Appeal held it will not normally constitute a reasonable adjustment to allow a person absent from work for a disability-related reason to continue to receive full pay, when a comparable employee absent due to sickness would not be so entitled.
- **How far flexible working should be required as a reasonable adjustment.** Courts have accepted various forms of flexibility as reasonable adjustments:
  - job swap to a disabled person (Chief Constable of Yorkshire Police v Jelic),
  - altered duties of a manager on return to work (Greenhof v Barnsley Metropolitan Borough Council),
  - 'creating' a new vacancy or job for a disabled employee (Chief Constable of Yorkshire Police v Jelic), and
  - protected pay during a change to a less responsible position (G4S v Powell).

However, a career break was not a reasonable adjustment in Salford NHS v Smith, and in Wade v Sheffield Hallam University the employer was not required to move a disabled employee to a vacancy without competitive interview.

- **The relationship between flexible working as a reasonable adjustment and other legal routes.** It is often unclear whether claims are better brought under section 15 of the Equality Act (discrimination arising from disability) or under the

Employment Rights Act provisions on flexible working. This will create confusion for employees, representatives, and employers alike, though is in part a common result following the implementation of new and complex legislation into an already complex legal environment.

- **Cost, particularly for auxiliary aids.** While guidance exists (Cordell v FCO), the courts have noted there is 'no objective measure for calibrating the value of one kind of expenditure against another'.

Employer knowledge

Employers do not always know that employees are disabled and hence the need for reasonable adjustments and there is an exception to that effect However, knowledge can be imputed (in this context, assumed to be the responsibility of) to an employer, and that causes uncertainty (Donelien v Liberata UK). Even where independent medical assessments have been carried out, there may be a requirement to scrutinise those assessments further, but the scope of that duty is unclear (Owen v Amec Foster Wheeler Energy Ltd).

Policy priorities

We recommend the Government address these areas of uncertainty through legislation or statutory guidance. Priority areas should include:

- Clarification of the definition of disability, particularly for fluctuating, episodic, and reproductive health conditions.
- Clearer guidance on how far the reasonable adjustment duty extends where adjustments might affect other employees.
- Clarification of the relationship between flexible working as a reasonable adjustment, claims under section 15 of the Equality Act, and rights under the Employment Rights Act.
- Clearer guidance on employer duties following independent medical assessments.
- Guidance on employer knowledge and the extent to which it can assumed to be their responsibility/imputed, in the reasonable adjustment context.

- **What are the impacts on disabled workers of employers' "back to the office" mandates?**

Back-to-office mandates have a disproportionate impact on disabled workers, including those with the women's health conditions described above, for two key reasons.

First, many disabled workers have built their working arrangements around home-based or hybrid working that allows them to manage their conditions alongside employment. A mandatory return removes accommodations that may have been quietly or informally in place without the need for formal disclosure. This is particularly significant for workers whose conditions carry stigma — including reproductive and gynaecological conditions, perinatal mental health problems, and other 'invisible' disabilities — because it forces a choice between disclosure (with attendant career risks) and a reduction in working capacity.

Research on women's health at work consistently finds that flexible working is most effective when it is a default feature of the job rather than something that must be formally requested as a reasonable adjustment. Where flexibility is simply 'how we work here', employees do not need to identify themselves as disabled, navigate legal processes, or risk stigma:

> *"I've not had to put in any reasonable adjustments … because they're flexible and everything anyway. You don't even have to ask … it's kind of having that empathy and understanding there already, to be able to deal with it."*
> (Complex Fertility Journeys study; Wilkinson et al., 2022)

Back-to-office mandates erode this position.

Second, employers issuing back-to-office mandates may be unaware of or insufficiently attentive to their Equality Act duties. Where a blanket mandate has the effect of placing a disabled employee at a substantial disadvantage, the duty to make reasonable adjustments may be engaged, regardless of whether the employee has formally identified as disabled. We recommend that any Government guidance on flexible working and back-to-office arrangements make explicit reference to Equality Act duties, and that the EHRC issue targeted enforcement guidance in this area.

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Thanks and acknowledgements

We would like to express particular gratitude to Dr Lisa Rodgers (Associate Professor, Leicester Law School) and Dr Krystal Wilkinson (Reader, Associate Professor, Manchester Metropolitan University) for their detailed expert contributions to our response.