

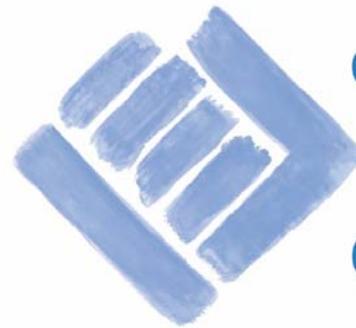
By Employers, For Employers



# Reasonable Adjustments & Mental Ill Health

Reasonable adjustments and mental ill health – practical ideas and responses to your obligations

Catherine Casserley  
Cloisters



employers'  
forum on  
disability

# The Legal Context – what are your obligations?

- Who does the Disability Discrimination Act (DDA) cover?
- What rights and responsibilities does it give?
- What are reasonable adjustments?
- Illustrative cases
- Practical approaches

## Definition of disability

A physical or mental impairment that has

- a long-term and
- substantial  
adverse effect on the ability to carry out  
normal day to day activities

Disregard medication when considering  
the effect upon someone of their  
condition

## **Potentially very broad scope –**

- not just “obvious” disabilities but also “hidden ones”, such as mental health issues
- mental illness no longer has to be “clinically well recognised”
- past disabilities also covered (e.g. someone who has had depression in the past)

It is unlawful to discriminate against a disabled person in:

- the arrangements for determining to whom employment should be offered
- terms on which employment is offered
- by refusing to offer or deliberately not offering employment

It is unlawful to discriminate against a disabled person :

- in the terms employment is offered
- in opportunities for promotion, transfer, training or receiving any other benefit
- by refusing such opportunities
- by dismissing him or subjecting him to any other detriment

- It is unlawful for an employer to subject a disabled applicant or employee to harassment
- It is unlawful to subject a person (disabled or otherwise) to victimisation

## Harassment

Where for a reason related to disability, there is unwanted conduct which has the purpose or effect of violating the disabled person's dignity or creating an intimidating, hostile, degrading humiliating or offensive environment for him

- direct discrimination
- disability related discrimination
- failure to make reasonable adjustments

## Direct discrimination

Less favourable treatment on the **grounds** of disability than a person not having that particular disability, whose relevant circumstances, including his abilities are the same as or not materially different from, those of the disabled person is treated

- **In practice**
- treatment based on prejudice
- “blanket” bans
- e.g. a visually impaired person is rejected for a job because the employer does not believe that she will be able to operate computers. A person whose relevant circumstances are the same but who was not visually impaired would not have been treated in that way - direct discrimination

**Direct discrimination cannot  
be justified**

## Disability related discrimination

- unjustifiable
- less favourable treatment
- for a reason relating to the disability

# Discrimination

- **“disability related” discrimination - example**
- a person who takes six months sick leave due to a disability is sacked
- not direct discrimination - anyone in the same circumstances would have been treated in this way
- less favourable treatment for a reason relating to their disability - but for the disability, they would not have had the six months off, and so would not have faced the sack
- (though see **London Borough of Lewisham v Malcolm**)
- subject to justification **“material and substantial reason”** which is in turn subject to the duty to make adjustments

Failure to make reasonable adjustments to

- physical features of premises
- provisions, criteria or practices

that place the disabled person at a substantial disadvantage

- Must know or be reasonably expected to know that it may put a disabled person at a disadvantage

- alter premises
- alter working hours
- provide additional training
- provide a reader or interpreter
- provide supervision
- modify procedures for testing or assessment

- allocate some duties to another employee
- transfer to fill a suitable vacancy
- transfer to another place of work
- allow absences for rehabilitation or treatment
- acquire or modify equipment

## Factors set out in the Act

- cost
- practicability
- effectiveness
- disruption
- size & resources of employer
- availability of assistance
- nature of activities and size of undertaking
- where a private household, extent of disruption or disturbance

## Justification

- material to the circumstances of the case
- substantial – carry real weight and be of substance
- cannot justify if there is a reasonable adjustment duty which has not been met and which would have made a difference
- cannot justify failure to make a reasonable adjustment or direct discrimination

Could a reasonable adjustment have made a difference?

A failure to make a reasonable adjustment cannot be justified

- Identification of potential disability-related issues
- Provision of reasonable adjustments
- Responsibility rests with management and not medical profession

## Recruitment

- London Borough of Hammersmith & Fulham v Farnsworth
- Paul v NPS

## Retention

- Beart
- Edwards
- EDS v Travis
- Hutchinson v Mason

# Particular issues for people with mental health issues

## Recruitment

- medical checks, attendance history

## Problems with the job

- the specific demands of the work
- relationships with managers and colleagues.

## Problems outside work that might affect the person's ability to do the job

- relationships with family, partners etc.
- financial issues.

## Mental health problems that might influence the person's ability to do the job

- fluctuations in mental state
- difficulties with medication.

## **Recruitment**

- Ensure application of reasonable adjustments to job tasks
- Ensure that medical checks are either required for every applicant or not at all
- Ensure that medical checks are only used to find out if people need reasonable adjustments at work

## **On appointment**

- ensure a well planned induction
- provide clear guidelines about what the individual is supposed to be doing
- let the person know who to ask if he or she is not sure what to do

## **In employment**

- provide regular supervision and feedback on performance.
- facilitate flexible working hours
- allow time off for medical appointments
- adjust small, non-central parts of the job
- Consider application of sickness absence procedure

- A manager notices that one of their staff is often making mistakes in their work and missing deadlines. The staff member says that they find it difficult to concentrate in the office environment and so they find it difficult to organise and plan their work. They also tell the manager that they had been diagnosed with depression in the past.
- A member of staff who has recurring depression joins a new team. After several months, they feel that other team members are making comments about people who 'want an easy life' and 'will use any excuse not to come to work'. The member feels that they cannot be honest about their depression and that they feel isolated and threatened.

- A member of staff develops a serious psychological problem following an accident. On his return to work the type of work he had been doing for a long time has been centralised in another office. He is given new duties, but struggles from the outset and the employer invokes performance management procedures. This results in the staff member taking more time off.
- A member of staff has Bipolar disorder. She enjoys working with advising colleagues working with clients in receipt of social care support. The member wants to move into a role where she took on her own client caseload. A vacancy arises and the member applies. She is successful in her application, but the employer says that they should do a risk assessment before she takes up the role because the job could be stressful.