



# **Guidance on Disability in the Workplace**

## **GUIDANCE**

**Issue 2, April 2018**

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## Introduction

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The Council is recognised as a Disability Confident Employer. Membership of the Disability Confident scheme is administered by the Department for Work and Pensions and recognises our commitment to successfully employing and retaining people with disabilities and those with health conditions. To retain this status, the Council is required to undertake a number of core actions and activities to demonstrate that it is taking practical steps to improve work and career opportunities for disabled people.

This guidance is provided to ensure that all Services are aware of the core actions and activities required and the best methods of implementing them to ensure both compliance and best practice. The guidance also covers relevant matters in managing employees who may be covered by the Equality Act 2010. The main focus of these guidelines is to enable managers to focus on the ability rather than the disability of individuals in a work setting.

The legal definition and further explanation of disability under the Equality Act 2010 is provided at Appendix 1. However, it is important to appreciate that this definition continues to be developed and clarified by decisions of the courts and employment tribunals.

## Scope

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This guidance applies to all Council employees.

## The Disability Confident Scheme

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The core actions outlined in the Disability Confident Scheme are grouped into 2 themes

1. Getting the right people for your business
2. Keeping and developing your people

To be recognised as a Disability Confident Employer, the Council is assessed against the following core actions under two themes.

## **Theme 1 - Getting the Right People for Your Business**

As a Disability Confident Employer, the Council is:

1. Actively looking to attract and recruit disabled people
2. Providing a fully inclusive and accessible recruitment process
3. Offering an interview to disabled people who meet the minimum criteria for the job
4. Flexible when assessing people so disabled job applicants have the best opportunity to demonstrate that they can do the job
5. Proactively offering and making reasonable adjustments as required
6. Encouraging our suppliers and partner firms to be Disability Confident
7. Ensuring employees have sufficient disability equality awareness

To meet its core actions within this theme, managers should be aware of practices that the Council is committed to undertaking.

### **Recruitment Advertising**

To publicly demonstrate that the Council is committed to good policies and practices in the employment of disabled people, the Disability Confident Employer logo is incorporated within all job advertisements and will feature both within careers literature and at the Council's stand(s) at career exhibitions. In addition, services should apply the symbol to all letterheads and other relevant stationery and ensure that it is displayed prominently.

### **Guaranteed Interview Scheme**

Guaranteeing an interview to all applicants with a disability who meet the minimum essential criteria is Council policy and applies to all job vacancies advertised either internally or externally. Application forms should be screened against the job criteria outlined in each section of the job profile to ensure the minimum criteria has been met.

### **Reasonable Adjustments**

Managers should be prepared to make reasonable adjustments when interviewing applicants with a disability to allow them to best demonstrate how they meet the requirements for the job as set out in the job profile for the role. This also applies to other selection methods.

### **Training**

The Council provides training to recruiting managers on its recruitment and selection processes which includes the obligations under the Equality Act. Further guidance on how the Act relates to recruitment within the Council is contained in Appendix 2.

## **Monitoring**

Diversity and Equality monitoring is undertaken on data gathered as part of the recruitment process. This data enables the Council to assess the effectiveness of its recruitment and selection procedures as they apply to disabled people and to take any actions as required.

## **Theme 2 – Keeping and developing your people**

As a Disability Confident Employer, the Council is:

1. Promoting a culture of being Disability Confident
2. Supporting employees to manage their disabilities or health conditions
3. Ensuring there are no barriers to the development and progression of disabled employees
4. Ensuring managers are aware of how they can support employees who are sick or absent from work
5. Valuing and listening to feedback from disabled employees
6. Reviewing the Disability Confident employer self-assessment regularly

To meet its core actions within this theme, managers should be aware of practices that the Council is committed to undertaking.

### **Supporting Employees**

It is the responsibility of line managers to ask disabled employees at least once a year what can be done to make sure they can develop and use their abilities at work. This can be incorporated within meetings under Performance Review and Development (or equivalent for teachers/SNCT employees). The meeting should cover the development needs and potential of the employee to ensure that their skills and abilities are being most effectively used.

The discussion is also an opportunity to identify ways to ensure that all employees with disabilities are fully included in communication, training and development activities, although managers should be continuously ensuring that this is the case. There may be a requirement to make some reasonable adjustments as a result of this discussion.

### **Reasonable Adjustments**

The duty to make a “reasonable adjustment” if work arrangements, duties or premises place a disabled person at a substantial disadvantage compared to a non-disabled person is a central part of the Equality Act 2010.

The employing function may need to consult with People and Organisation, Finance (where there are cost implications) and any other relevant functional area, to determine what is reasonable, in terms of:

- service
- cost/budget implications
- timescales involved in carrying out essential works
- employees
- permanent/temporary work

Examples of the types of adjustments which may require to be considered are:

- making adjustments to premises
- redistributing duties among employees
- transferring the employee to fill an existing vacancy
- altering working hours
- moving the employee to a different place of work
- allowing the employee to take time off during working hours for rehabilitation, assessment or treatment
- giving the employee, or arranging for, specialised training
- acquiring or modifying equipment or software
- modifying instructions or reference manuals
- modifying procedures for testing or assessment
- providing additional supervisory support

In making a reasonable adjustment, it is expected that the cost(s) incurred will normally be met from the revenue budget of the functional area in which the employee is, or is going to be, employed.

Every effort should be made to make reasonable adjustments to enable employees to undertake their job; advice may be sought from People and Organisation where reasonable adjustments are not straightforward. Access to Work, a government funded organisation, can also provide advice directly to individuals with a disability and/or to their manager, as well as partial funding for adjustments – please see the Council's Access to Work Guidance for further information.

Appendix 3 to this document is a Workforce Support Plan and is a useful tool for managers to record any adjustments considered and/or implemented.

### **Absence from Work**

The Council's Attendance policy and procedure should be used to manage all sickness absence. Where an employee's disability results in absence from work, managers should ensure that they support the employee through the procedure. Further consideration should be given to any reasonable adjustments that would aid the employee in their attendance at work.

The Council also has a provision for 'Disability Leave' which may provide paid time off for planned absences which are directly related to an employee's disability, allowing employees with a disability or those who become disabled, to concentrate on managing their disability during employment with the support of the Council.

## **Training and Communication**

The Council provides Equality and Diversity training for managers and employees, including disability. It also provides online guidance on disability awareness, including relevant policies, updates and best practice.

In addition to the core actions under Themes 1 and 2 above, the Council must also commit to at least one 'activity' from a list in the Disability Confident Employer Scheme, details of which can be found at the second link under 'Further Information' below.

## **Further Information**

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Further information on the Disability Confident Scheme can be found at <https://www.gov.uk/government/collections/disability-confident-campaign>.

and at

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/699318/disability-confident-employer-pack-level-2.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/699318/disability-confident-employer-pack-level-2.pdf)

## **DISABILITY DEFINITIONS**

This Appendix is summarised from the Office of Disability Issues' Equality Act 2010 Guidance;

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality\\_Act\\_2010-disability\\_definition.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf).

It outlines what the Equality Act 2010 means by the term “disability”. The Act covers disabled people and people who have had a disability in the past.

Disability is defined 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.**

### **Explanations of:**

#### **1. impairment**

The definition covers physical and mental impairments.

These include:

- impairments affecting the senses, such as sight and hearing
- mental impairments including learning disabilities and mental illness (if it is recognised by a respected body of medical opinion)

The Government has issued guidance, under the Act, about whether an impairment has a substantial or long-term effect. This guidance does not in itself impose legal obligations on an employer or service provider, but a tribunal or court must when considering a complaint about discrimination take into account any of the guidance which appears to be relevant.

#### **2. substantial**

For an effect to be substantial, it must be more than minor or trivial.

### **Examples**

The following are examples that are likely to be considered substantial:

- inability to see moving traffic clearly enough to cross a road safely
- inability to turn taps or knobs
- inability to remember and relay a simple message correctly

#### **3. long-term**

These are effects that:

- have lasted at least 12 months, or
- are likely to last at least 12 months, or
- are likely to last for the rest of the life of the person affected



Long-term effects include those which are likely to recur. For example, an effect will be considered to be long-term if it is likely both to recur, and to do so at least once beyond the 12-month period following the first occurrence.

### **4. day-to-day activities**

The Act does not define what is considered to be day-to-day activities, however these are likely to include normal activities carried out by most people on a regular basis, for example;

- using everyday objects such as a keyboard
- lifting, moving or carrying everyday objects such as a chair
- having a conversation or using a telephone
- getting washed and dressed
- preparing and eating food
- carrying out household tasks
- walking and travelling by various forms of transport
- taking part in social activities

## **Particular cases or conditions**

### **Severe disfigurements**

The Act's definition treats severe disfigurements as disabilities, although they have no effect on a person's ability to carry out normal day-to-day activities.

If, however, the disfigurement consists of a tattoo which has not been removed or non-medical body piercing, regulations have the effect of ensuring that these would not be treated as a disability.

### **Impairments helped by treatment or artificial aids**

Medication or equipment (such as an artificial limb) which helps an impairment, is not taken into account when considering whether an impairment has a substantial effect.

For example, a person who wears a hearing aid to improve their hearing is considered to have the hearing loss that would exist without the use of the aid. An exception is when people wear glasses or contact lenses - it is the effect on the person's vision, while wearing their glasses or contact lenses, that is considered.

If, however, the treatment is likely to cure the impairment, this should be taken into account in assessing whether the impairment is long-term.

### **Progressive conditions**

For example, a person with arthritis would be covered from the time they first developed symptoms that affect their ability to carry out normal day-to-day activities. They would not be covered just because the illness had been diagnosed, it would have to have an effect on their ability to carry out normal day-to-day activities.

The Act provides that a person with one of the following progressive conditions to be covered from the point of diagnosis:

- cancer
- HIV infection
- multiple sclerosis

### **Past Disabilities**

The definition covers people who have had a disability in the past. If a person once had a disability which is covered by the Act, they are still protected if they have recovered. This applies even if they recovered before the Act came into force. This includes anyone who was in the register of disabled persons under provisions in the Disabled Persons (Employment) Act 1944 on both 12 January 1995 and 2 December 1996.

### **Not Covered by the Act**

The following conditions are not to be treated as impairments for the purpose of the Act:

- Addiction to or dependency on alcohol, nicotine or any other substance (unless the addiction resulted from the substance being medically prescribed)
- Seasonal allergic rhinitis (e.g. hay fever) except where it aggravates the effect of another condition
- A tendency to set fires
- A tendency to steal
- A tendency to physical or sexual abuse of others
- Exhibitionism
- Voyeurism

## **Recruitment Implications of the Equality Act 2010**

Employers must ensure that their recruitment practices comply with the Equality Act 2010 and people are being treated fairly throughout the recruitment process.

### **1 Job Profile**

A well written job profile will help ensure that the right person is selected for the post and focuses attention on the required skills. When developing a job profile, care should be taken to avoid using language that could be discriminatory and possibly discourage disabled persons from applying. Job profiles must be as objective and quantifiable as possible.

A poorly written job profile can have a negative effect on the recruitment of suitably qualified candidates with disabilities. Where discriminatory phrases are used and cannot be justified, it could leave the Council open to litigation.

The Council provides training and guidance on writing job profiles.

### **2 Advertising**

Advertisements suggesting discrimination against disabled people can be legally challenged. The advertisement should accurately but briefly reflect the job profile and encourage anyone to apply for the role who believes they meet the requirements for the role as set out in the job profile.

All Council job advertisements refer to the Disability Confident Employer accreditation to encourage applications from disabled people.

### **3 Shortlisting**

**ALL** applicants with a disability who meet the minimum criteria for any vacancy are guaranteed an interview.

Application forms should be screened against the criteria in each section of the job profile.

### 4 Interview Arrangements

When inviting a disabled applicant for interview, the Council is required to make "reasonable adjustments" to ensure that the applicant is not disadvantaged in any way. For example,

- changing the time;
- paying additional travel expenses;
- changing the location;
- allowing more time.

During the interview itself, interviewers must avoid asking questions about a candidate's disability.

When asking questions, the interviewers should:

- be open minded;
- avoid making assumptions;
- ensure that they give candidates every opportunity to demonstrate their suitability for the job.

### 5 The Final Selection

The selection panel should assess objectively a disabled candidate's ability to do the job, taking into account any reasonable adjustment(s) that might help him or her perform the job.

Examples of reasonable adjustments can be found in this guidance note.

### 6 Remedies

Disabled persons who feel they have been discriminated against unlawfully in employment have the right of complaint to an Employment Tribunal.

A tribunal may, on upholding a complaint, make a declaration ordering payment of compensation including an award for injury to feelings and/or make a recommendation. There is no limit on the maximum amount of compensation awardable.

### 7 Further Advice

Further guidance on the recruitment implications of the Equality Act is available from People and Organisation.

**WORKPLACE SUPPORT PLAN**

Employee Name:		Function:	
Job title:		Line manager:	

Reason for support requirements	Identified by	Adjustments/Measures put in place	Monitoring of measures	Timescales

\*\*\*This document can be amended and updated at any time according to discussions taking place.

**Signed by Line Manager and employee that they agree the Workplace Support Plan**

Signed (line manager):

Date:

Signed (employee):

Date:

<b>Review Meetings</b>	<b>Date</b>	<b>Summary of Meeting</b>	<b>Line Manager's Signature</b>	<b>Employee's Signature</b>
Weeks 1- 2				
Weeks 3- 4				
Weeks 5- 6				
Weeks 7- 8				