



Resource pack for reps and members

Disability



Disability resource pack for reps and members

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Introduction

Prospect is committed to achieving equality for all members, irrespective of disability, sex, gender identity, race, ethnic origin, sexual orientation, age or religion.

We also adhere to the social model of disability, which is based on what disabled people can do rather than what they cannot do.

The social model looks at the barriers that our society puts in the way of disabled people's participation, including attitudes and practical barriers.

It aims to remove unnecessary barriers that prevent disabled people from accessing work and services and living independently.

The social model identifies the problems faced by disabled people because of external factors. It distinguishes between impairment and disability.

Impairment is described as a characteristic or long-term trait, which may or may not result from an injury, disease or condition.

Disability is the difficulties experienced by people with an impairment by society not taking sufficient measures to take account of their needs.

However, the legislation dealing with disability equality, the Equality Act, uses language based on the medical model, which presents the impairment as the cause of disabled people's disadvantage and exclusion.

Because the legislation uses this language, this will inevitably be reflected in our guidance on the Equality Act.

This guidance aims to help reps and members to improve equality for disabled people and eliminate discrimination in the area of employment.

We also highlight good practice in the workplace which will help negotiators and representatives improve the working lives of our disabled members, and in doing so, progress equality for all.

However, the law on discrimination at work is complex so if in doubt, please consult your Prospect full-time officer for advice as soon as possible.

1. Disability, equality and discrimination in employment: what the law says

The Equality Act protects against discrimination and unfair treatment based on people's 'protected characteristics'. These are:

- age
- disability
- gender identity
- marriage and civil partnership
- pregnancy and maternity
- race
- religion and belief
- sex
- sexual orientation.

The Act has a specific definition of disability as someone who:

“has a physical or mental impairment, which has a substantial and long term adverse effect on their ability to carry out normal day-to-day activities”.

This definition is important and an individual would need to meet each part of it to be covered under the Act.

Physical or mental impairment

This includes people who have mobility and sensory impairments, for example, and also those with 'hidden disabilities' such as mental impairment, learning difficulties and those who are neurodivergent.

People with HIV, cancer or multiple sclerosis are covered from the point of diagnosis.

Substantial adverse effect

There is no definition under the Act, but there is guidance from the Equality and Human Rights Commission that substantial means more than minor or trivial.

The EHRC guidance goes on to state that relevant factors in deciding whether a disability has a substantial effect would be: the time taken to do an activity and the manner in which it is done, compared to somebody without that disability, particularly if it can only be done with pain or causes fatigue.

Long term

Previous case law has established that long-term is an impairment which:

- has lasted for 12 months
- is likely to last for 12 months
- is likely to last the rest of the person's life.

Effect on normal day-to-day activities

The impairment must have an effect on normal day-to-day activities, but this is not defined within the Act.

Activities within the workplace may well be considered "normal day-to-day activities", such as sitting, standing, walking, interaction with others, writing, using a telephone or computer, or lifting, moving or carrying everyday objects.

Effect of medical treatment

The effect of medical treatment, or use of a prosthesis, to control the disability or impairment would not be taken into account in determining whether a person is covered by the definition.

The use of glasses or contact lenses to correct vision is specifically excluded.

Recurring and progressive conditions

People with a condition or impairment which has recurring effects will be covered under the definition of disability within the Act.

The EHRC's guidance gives an example of someone with rheumatoid arthritis, who may suffer the effects for a few weeks and then have a period of remission. In this situation, the effects are likely to recur, so the person would be covered.

Cancer, HIV infection and multiple sclerosis are progressive conditions which are specifically covered by the Act, at the point of diagnosis.

Past disabilities

People who have had a history of disability, and now recovered, would still be protected from discrimination under the Act.

Discrimination

Disabled people are protected from discrimination at work in the same way as others with protected characteristics: direct discrimination, indirect discrimination, harassment and victimisation.

In addition, disabled people are protected from: discrimination arising from a disability and the failure to make reasonable adjustments.

Discrimination is outlawed throughout the employment process, from recruitment and selection through to termination of employment and beyond in some cases.

Direct discrimination

This is less favourable treatment because of a person's disability. This includes stereotypical assumptions about a perceived disability and association with someone who is disabled.

Indirect discrimination

This is where the employer applies a provision, criterion or practice which applies for everyone in the workplace but would have particular disadvantages for disabled people compared with people without that disability.

It may be possible for employers to justify their provision, criterion or practice if they can show that it is "a proportionate means of achieving a legitimate aim".

Employers should consider whether application of a provision, criterion or practice may disadvantage a disabled person and if so, what reasonable adjustments they can make.

Discrimination arising from a disability

This provision outlaws discrimination against a disabled person where they are treated less favourably because of something linked to their disability.

For example, a person is being disciplined for poor timekeeping which is a result of their disability. A reasonable adjustment for this person might be to allow them to work flexible hours.

Failure to make reasonable adjustments

A failure to make reasonable adjustments cannot be justified by the employer. Many adjustments involve little or no costs to the employer, but even if they do it may still be reasonable to provide the adjustment.

The costs of any adjustments must not be passed on to the individual concerned.

Harassment

Unwanted conduct related to a person's disability is unlawful under the Act where it causes them distress, humiliation or results in an offensive environment for them. This also applies where the harassment is based on associated or perceived disability.

See our guidance on harassment and bullying.

Victimisation

This is where someone is treated less favourably because they have made or supported a complaint about disability discrimination.

Other provisions

It is unlawful under the Act for employers to ask questions about the health or disability of job applicants. This includes questions about sickness absence.

The Act also covers ex-employees where employers must not discriminate against them, for example in the provision of a reference or access to sports or social facilities.

If you feel that you or another member has suffered a detriment due to disability discrimination, contact your full-time officer at the earliest opportunity. This is because if a case could potentially go to employment tribunal, there are strict procedures and time limits involved.

Disability equality and trade unions

The Equality Act also applies to trade organisations, including employers' organisations and trade unions.

Under the Act, it is unlawful for unions to discriminate against members or prospective members on the grounds of disability.

Representatives should take all reasonable steps to ensure that the union's services are available and accessible to disabled members, including meetings and materials.

See further guidance in our leaflet Access All Areas – <https://library.prospect.org.uk/download/2009/00570>

2. Disability equality at work

The Equality Act protects disabled people from discrimination at work. See section 1 for the legal definitions and provisions under the Act.

This section aims to highlight the areas where discrimination may occur in the workplace and help negotiators and representatives to eliminate it and promote equality for our disabled members.

It is good practice for reps to consult their disabled members for their views and to see what issues they face.

It is also beneficial to conduct an audit of workplace policies and procedures in relation to disability equality, in much same way as a health and safety assessment.

It is important to bear in mind that the whole employment process will have some impact on disabled people:

- recruitment and selection
- terms and conditions
- access to promotion, training, transfer or development opportunities
- appraisal and performance systems
- grievance and disciplinary procedures
- absence management policies
- redundancies
- dismissal
- after termination of employment.

The Equality Act places a duty on employers to provide reasonable adjustments where the application of any of these policies and procedures may disadvantage disabled people. See page 15.

The Equality and Human Rights Commission, employer-led organisations like the Business Disability Forum and voluntary sector organisations (eg Mind) provide comprehensive guidance for employers.

- www.equalityhumanrights.com/en
- <https://businessdisabilityforum.org.uk/>
- www.mind.org.uk/

Sickness absence and disability

A common misconception, especially among employers, is that disabled people take a lot of sick leave. Statistics have demonstrated that this is not the case: disabled people have lower rates of absenteeism and sickness than their non-disabled colleagues.

Sickness absence policies should not be used to disadvantage disabled employees, particularly when applied to disability-related absence.

Disability-related absence should be counted separately from sickness absence. Absence for regular medical treatment should be considered in the same way.

It is good practice for employers to have separate policies and procedures to deal with disability-related absence. These policies should be flexible in terms of the time allowed for disability-related absence and include provision for review before any period of paid absence ends.

If there is a dispute with the employer about disability-related absence, it may be advisable to get an independent medical report, which should be paid for by the employer.

Disability leave

Disability-related absence can be classed as disability leave to allow for a period of adjustment. This is particularly useful when members either become disabled while employed or when an existing disability changes.

Such leave would enable the employee to adjust and the employer to provide assistance/adjustments such as retraining or adapting the workplace.

Disability leave is separate from sick leave and should not be counted against a sickness record. Any period of disability leave should be counted as continuous service.

Policies on disability leave should be flexible and related to the individual circumstances in each case. Alternatively, they could stipulate the maximum amount of disability leave available.

They should cover a wide range of grounds for taking the leave, eg: appointments, treatment, therapy, recuperation, training or retraining, assessments, waiting for adjustments to be put in place, counselling, time to adjust to new medication.

Retention

Most disabled people are not born with their impairment or health condition, developing it during their lives and many during employment.

Therefore employers should make every effort to retain them. This makes sound business sense because of the significant investment in employees' training and experience. But also because it is very expensive for employers to recruit and retain new employees.

See page 15 on reasonable adjustments, but in essence employers should consider the following in relation to retaining disabled employees:

- disability leave - see above
- use of specialist disability organisations when considering adaptations to the workplace or equipment
- a period of phased return to work
- flexible working hours, including homeworking

- the possibility of making modifications to the job, for example, rearranging working methods or tasks.

Sometimes reasonable adjustments may not be possible to enable the disabled person to continue in their current post.

Therefore, it may be appropriate to transfer them to a suitable alternative post. The disabled member must be consulted about their needs and abilities throughout the process.

Where the employer introduces changes to job design, new equipment or software, reasonable adjustments may be needed for training or for adapting to the new equipment.

Appraisal and performance systems

Appraisal systems are mechanisms for line managers to review performance with a view to making recommendations for promotion or development opportunities. If disabled workers consistently receive low scores they will miss out on these opportunities.

Disabled people may be at particular risk of losing out if appraisal and performance systems are linked to pay or where there are discretionary-based pay systems or payments linked to productivity.

Lower appraisal and performance markings may be due to the lack of access to training and development opportunities.

In addition, where disabled employees consistently receive lower scores, this may ultimately affect their own performance if they feel that the organisation values them less highly.

If a disabled person is marked down in their appraisal or performance review for a reason related to their disability eg not meeting their targets due to the absence of a reasonable adjustment, this is likely to be discriminatory.

Employers and line managers should assess performance after a reasonable adjustment has been put in place.

The appraisal and performance system should be examined to see whether it may be discriminatory, ie the factors/criteria under consideration may be biased or subjective.

Managers must consider whether any reasonable adjustments in the system itself would improve an individual's performance.

Managers should also consider whether performance may be affected by a non-visible impairment which may or may not have been disclosed.

Reasonable adjustments should be tailored to the individual and their work environment(s) and may include:

- ensuring any paperwork for the appraisal/performance review is accessible
- ensuring that the meeting itself is accessible in terms of timing, venue etc
- allowing the disabled worker more time to complete tasks, or more breaks
- providing equipment that would remedy any shortfalls in productivity
- providing voice recognition or text reader software
- providing quiet spaces in which to work

- changing the ambience in the workplace, ie lighting or temperature
- ergonomic adjustments to the workstation, eg seating, keyboard, mouse etc
- flexible working hours
- coaching or mentoring
- help with planning or prioritising tasks
- training in particular skills, eg project or time management
- reallocation of duties
- changing or reducing targets
- transfer to a suitable alternative post.

The appraisal and performance interview is an opportunity for disabled workers to discuss workloads, what adjustments they may need to enhance their performance, or to review the adjustments they may already have.

Detailed guidance can be found in our briefing on disability discrimination and appraisal and performance systems (<https://library.prospect.org.uk/id/2013/01192>)

EHRC guidance – How to avoid discrimination when conducting appraisals

- make sure that performance is measured by transparent, objective and justifiable criteria using procedures that are consistently applied
- check that, for all workers, performance is assessed against standards that are relevant to their role
- ensure that line managers carrying out appraisals receive training and guidance on objective performance assessment and positive management styles, and
- monitor performance assessment results to ensure that any significant disparities in scores apparently linked to a protected characteristic are investigated, and steps taken to deal with possible causes.

Redundancy and redeployment

Disabled people are much more likely to be selected for redundancy than their non-disabled colleagues. It may not be enough for employers to claim that their redundancy procedures have been applied equally to all, without first considering whether there are reasonable adjustments that can be made to help keep a disabled person employed.

The potential for discrimination in redundancy situations includes: selection pool criteria that are too restrictive and matrix factors and scores with criteria that are too narrow. It is common for employers to use the following criteria:

- length of service: a reasonable adjustment would be to discount any breaks in service for disabled people
- absence records: disabled people may face discrimination if time off related to their impairment is counted against them; counting an individual's time off to care for a disabled dependant might be associative discrimination

- performance criteria: it may be discriminatory to count performance assessment where no adjustments have been put in place to remedy an identifiable drop in performance due to the individual's impairment.

Case law has established that a reasonable adjustment in a redundancy situation would be for employers to always consider redeploying disabled workers to keep them in employment.

Disabled workers may be held in a redeployment pool longer than others because managers where vacancies might exist are wary of taking on the additional costs of reasonable adjustments. One solution is to push for a central resource for reasonable adjustments, rather than making it a departmental responsibility.

Health and safety

A lack of understanding about disability and health and safety law has often resulted in employers using health and safety as a reason to discriminate against disabled workers.

Disabled members may have a risk assessment that is specific to their particular circumstances; they must be involved in the assessment. Reasonable adjustments can often minimise or even eliminate potential risks to the disabled worker and their colleagues.

The Health and Safety Executive has produced specific guidance for employers and employees on health and safety for disabled people: www.hse.gov.uk/disability/

Mental health

It is estimated that one in four of us will experience a mental health problem at some point in our lives. This translates into one in six people in the workplace suffering stress, anxiety or depression at any one time.

One of the biggest issues facing people at work is the stigma and discrimination associated with mental ill health, which is based on ignorance and prejudice. This can come from colleagues as well as employers.

Stigma, stereotyping and discrimination are major factors in deterring people with mental health problems from disclosing their condition to their employer. In many cases, people may not even see that they meet the definition of disability under the Equality Act.

However, in order to provide reasonable adjustments, the employer must be made aware.

It is important that the person with mental health problems is involved in discussing what reasonable adjustments may be effective for them; examples might include time off to attend counselling, allowing someone to take more frequent breaks and providing a workplace 'buddy'.

Communicating and talking about mental health is the first step towards ensuring a mentally healthy workplace. Other things you can do to ensure a supportive workplace include:

- ensuring that as many reps as possible have had some training on mental health at work
- ensuring that mental health champions have a thorough understanding of mental health problems and how people can be better supported in the working environment

- networking with other branches or unions to share knowledge and good practice
- reviewing policies and procedures to ensure that they do not discriminate against members with mental health problems
- ensuring union communications are positive about supporting members with mental health problems
- negotiating a formal Employee Assistance Programme where individuals can receive counselling and advice.

See Prospect's workplace guide to preventing work-related stress and TUC guidance on dealing with workplace mental health, for more detail.

- <https://library.prospect.org.uk/download/2005/00629>
- <https://www.tuc.org.uk/>

If you think your employer is struggling, there are excellent sources of advice and guidance from Mind, ACAS, Business Disability Forum, and the Health and Safety Executive.

Neurodiversity

Neurodiversity describes the diversity of human brains and neurodivergence is a difference in the wiring of people's brains.

However, many neurodivergent people still remain undiagnosed, despite a better understanding of these differences.

Although most neurodivergent people will not consider themselves to be disabled, they will be covered by the disability discrimination provisions of the Equality Act. This includes the employer's duty to make reasonable adjustments.

You can find further Prospect guidance on our website and in the following briefings:

- Neurodiversity and organisational change – <https://library.prospect.org.uk/download/2017/00731>
- Neurodiversity and discrimination – <https://library.prospect.org.uk/download/2013/01208>
- <https://prospect.org.uk/topic/neurodiversity/>

Disability passports

A disability passport is a document, owned by the individual, which outlines the reasonable adjustments the employee requires. It should not be about the individual's particular impairment(s), except where specific steps need to be taken in an emergency, for example administering medication.

The passport records the adjustments that have been agreed so that there is no need to revisit or renegotiate them every time the employee is transferred to a new job, promoted, relocated or when there is a new line manager. You can download further guidance from our library – <https://library.prospect.org.uk/download/2019/00731>

Monitoring

Monitoring is not only good practice, but is essential to establish whether there are any inequalities embedded within the organisation's employment processes and to map trends over time.

Monitoring the application of appraisal and performance systems will identify whether disabled employees are being treated less favourably by receiving lower performance markings and therefore whether this affects their pay or benefits.

Negotiators and representatives can then start to address this disadvantage by asking why this has happened and what reasonable adjustments can be made to address this.

This may involve a review of the appraisal and performance systems themselves, the competency frameworks and perhaps addressing line managers' and other employees' attitudes to disabled employees generally.

Monitoring disabled staff can be a sensitive issue. It is not necessary for employers to ask what is "wrong" with people – this is known as the medical model.

The social model maintains that people are disabled by the barriers that stand in the way of their participation in society and in the workplace.

The only question that needs to be asked for general purposes is: "Do you consider yourself to be disabled? Yes/no".

If the answer is yes, this should be followed up by a question on what reasonable adjustments are required.

Contact your full-time officer for more detailed guidance on monitoring disability.

Monitoring checklist

- if done properly, disability monitoring has the potential to provide the information needed to guide an organisation towards an effective disability equality policy, and is an essential tool for measuring progress towards equality targets
- clarity about the purpose of the proposed monitoring and the use to which the data will be put is vital
- monitoring should be an integral part of an overall equality plan, including a clear understanding of what is intended, how it will be measured, and when it will be reviewed
- disability monitoring should be done after consultation with disabled workers and with the relevant trade unions
- the approach needs to be based on the social rather than the medical model, with the objective of identifying and removing barriers
- monitoring should be done by asking whether someone regards themselves as disabled, and only - if appropriate - by asking about their impairment group, not by identifying an individual impairment
- a separate procedure should ask people to identify barriers they face
- guaranteed confidentiality and anonymity are essential to obtaining a good response.

3. Reasonable adjustments

The legislation covering discrimination, The Equality Act, has positive measures to ensure equality for disabled workers.

The measures go beyond the need to avoid discrimination. They place a duty on employers to provide reasonable adjustments where a disabled worker would be at a substantial disadvantage.

This includes providing adjustments in relation to:

- provisions, criteria and practices
- physical features of premises
- provision of auxiliary aids which are required by the employee.

Provided that the employer knows, or could reasonably have known, that the employee has a disability, failure to make a reasonable adjustment cannot be justified.

Employers should be proactive and take steps to find out whether any employees, and job applicants, are disabled and need adjustments.

Any costs associated with providing the adjustment must not be passed on to the employee/ applicant.

Reasonable adjustments must be provided throughout the employment process, ie:

- at the recruitment and selection stage
- provision of training and development opportunities
- promotion
- application of the organisation's policies, and
- on leaving the organisation.

It may also apply after the employment has ended, for example in the provision of pensions.

What is reasonable?

What is reasonable? Any adjustment must remedy the disadvantage that the disabled person faces. Ultimately it is for employment tribunals to determine whether or not an adjustment is reasonable.

They would consider:

- the effectiveness of the adjustment
- the extent to which it is practicable for the employer to make the change
- any financial or other costs involved
- the employer's financial and other resources
- the availability of financial and other assistance.

It is always best to remind employers of their duties and good practice benefits so that the stress and expense of an employment tribunal (for both sides) can be avoided.

As far as possible employers should anticipate support and adjustments for all new starters, through questionnaires for example, and review after a period of time, say three or six months.

Equality and Human Rights Commission

The Equality and Human Rights Commission website has comprehensive guidance for employers and employees.

Many adjustments involve little or no costs to the employer. But even if they do, it may still be reasonable to provide the adjustment when the costs of recruiting and training new staff, for example, are taken into account.

The employer must be able to demonstrate that they have properly investigated what adjustments might be appropriate.

There is evidence that where appropriate reasonable adjustments have been put in place, disabled workers are more loyal to their organisation and they feel more valued and motivated in their job.

The EHRC code of practice and guidance gives examples of adjustments:

- making adjustments to premises
- reallocating work
- changing working hours
- transferring to a different place of work
- transferring to a different job
- allowing time off for rehabilitation, assessment or treatment
- providing training
- acquiring or modifying equipment or reference manuals
- modifying procedures for testing or assessment
- providing a reader or interpreter
- providing supervision, mentor, or work “buddy”
- allowing disability leave
- modifying policies and practices

employing a support worker

Social model of disability

Prospect adheres to the social model of disability, ie that the disability is the result of barriers preventing the inclusion of people with impairments, not the result of the impairment itself.

Workplace adjustments are therefore crucial to ensuring that disabled workers have equal access and can participate fully in the workplace.

Employers (and some members) may regard the provision of reasonable adjustments as 'more favourable' treatment for disabled workers.

This is a key area where there is a great deal of misunderstanding about ensuring equality for disabled workers.

A common belief, particularly among employers, is that the right thing to do is to treat everyone the same.

However, it is completely legitimate, and the whole point of the reasonable adjustments duty, to treat disabled workers differently, or more favourably, in order to overcome the barriers they face, allow them to participate equally and to achieve a more balanced outcome.

To tackle misunderstandings surrounding disability discrimination, it is crucial that all those involved in line management should be properly trained.

It is impossible to write a list of suggested adjustments for each impairment or health condition, the adjustments required will very much depend on the individual, their particular job and work environment.

What works for one person may not be appropriate for another, even if they have the same type of impairment.

So generalisations should be avoided at all costs.

This guidance intends to encourage reps to start conversations with disabled members and employers on the adjustments needed to overcome barriers.

Disabled members may also have built up their own coping strategies to try to mask the challenges they are facing in the workplace – this may be especially so for those with invisible impairments.

It is therefore important for reps to listen carefully to members' concerns about any difficulties they are having at work and to consider what adjustments might help them.

These conversations can help members feel more confident that the union is there to help them and to raise the need for adjustments with the employer.

A combination of adjustments to help overcome the disadvantages faced by the disabled employee may be required.

It is essential that the disabled employee is involved in the discussions about what reasonable adjustments are needed. But it is the employer's responsibility to explore the possibilities – even where the employee does not know what to ask for.

The employer could ask for advice and guidance from the government's Access to Work scheme, or a specialist disability organisation. Access to Work may also provide funding for some adjustments if this is needed.

Hidden impairments

Some adjustments which would particularly benefit those with hidden impairments, such as those who are neurodivergent, would also benefit all employees, for example:

- Procedures that take account of diversity generally, and facilitate some flexibility so that employees' strengths can be recognised and as far as possible job roles tailored to make best use of these strengths. This would also enable movement between job roles so that, for instance, an employee's strengths can be used in a role that suits them rather than focusing on weaknesses and taking inappropriate performance management actions which are likely to be counter-productive.
- Assessment procedures that take account of peoples' difference and are designed to test for requirements which are actually essential for the job, rather than those that are not fundamental to it. (Individuals will often be able to achieve their job objectives but use different strategies from those which are expected).
- Providing a working environment to minimise distractions. In open plan offices, this could include: noise-reducing partitions, headphones, thoughtful siting of printers and photocopiers and 'quiet breakout areas'.
- Other adjustments to the environment, eg lighting, temperature, noise.
- Clear and concise communications, both written and oral.
- Clear signage within buildings.
- Flexible working hours, enabling later start or finish times.
- Options for homeworking, perhaps part-time for a while. Appropriate IT and communications support should be provided.
- Providing equality and diversity awareness training for all staff members, and specific training for line managers.
- Providing mentors.
- Line managers should ask their teams what adjustments they may need to be able to carry out their work effectively.

Employers should consider holding a central budget for adjustments, which may relieve pressure on local departments'/teams' budgets.

Hints and tips for reps

- challenge inappropriate comments and behaviour about disability
- be open and approachable for members who wish to have conversations about difficulties they are having at work
- listen to members and consider whether their issues may be due to an impairment or a health condition
- ask members what they think may help their situation
- ensure that employers focus on what members can do, rather than what they can't
- ensure that employers are flexible in their approach and carry out a proper assessment of what is required
- employers should provide appropriate training for all staff, but particularly for those with line management responsibilities

- employers should consider adjustments to the application of their policies and procedures, eg provision of training and development, recruitment selection and promotion, performance and assessment, redundancy selection criteria etc
- regular reviews with the member about whether the adjustments are still appropriate for them should be held

Once the adjustments have been agreed, it is good practice for the employer to provide the disabled worker with a disability passport which records the adjustments made.

This is particularly useful if there is a new line manager for example or if the employee is transferring to a new department. See Prospect's guidance on disability passports (page 13).

Remember that the aim is to remove the barriers faced by our disabled members, rather than expecting them to fit the norm for the role or work environment they are in.

Further Prospect guidance:

Disability passports – <https://library.prospect.org.uk/download/2019/00731>

Neurodiversity and organisational change – <https://library.prospect.org.uk/download/2017/00731>

Disability discrimination and appraisal and performance systems – <https://library.prospect.org.uk/id/2013/01192>

Neurodiversity and discrimination – <https://library.prospect.org.uk/download/2013/01208>.

4. Disability and the public sector equality duties

The Public Sector Equality Duty is part of the Equality Act 2010 and applies to all public bodies and organisations carrying out a public function.

The duty requires public bodies to have due regard to the need to:

- eliminate discrimination, harassment and victimisation
- advance equality of opportunity between people who share a protected characteristic and those who do not
- foster good relations between people who share a protected characteristic and those who do not, when carrying out their activities.

The protected characteristics under the Equality Act are:

- age
- disability
- gender reassignment
- marriage and civil partnership (but only in respect of eliminating unlawful discrimination)
- pregnancy and maternity, race – this includes ethnic or national origins, colour or nationality
- religion or belief – this includes lack of belief, sex and sexual orientation.

The duty means that public bodies have to consider all individuals when carrying out their day-to-day work: in shaping policy, delivering services and also in relation to their own employees.

The Equality Act is clear that in meeting the requirement to advance equality of opportunity, public organisations must have due regard to the need to:

- remove or minimise the disadvantages suffered by people due to their protected characteristics
- take steps to meet the needs of people with certain protected characteristics where these are different from the needs of other people
- encourage people with certain protected characteristics to participate in public life or in other activities where their participation is disproportionately low.

The legislation is clear that meeting different needs includes (among other things) taking account of the needs of disabled people. It says: “compliance with the general equality duty may involve treating some people more favourably than others”.

Public authorities need to take a proactive approach to avoid discriminating against disabled people in all their decisions and activities.

This is the general duty which all public authorities must adhere to. In addition, there are specific duties which are different in England, Scotland and Wales.

Specific duties in England

Public bodies in England and non-devolved public bodies in Scotland and Wales are only required to comply with two objectives:

- publish information annually to demonstrate compliance with the general duty
- prepare and publish one or more equality objectives they think they should achieve to meet the general equality duty, at least every four years; the objective(s) must be specific and measurable.

Public authorities employing more than 150 people must publish equality data on their employees. This gives reps the opportunity to analyse data where this is not readily provided and seek to make improvements where needed.

Published information must be easily accessible.

Although public authorities are not required under the Act to publish equality schemes, or carry out impact assessments, it is good practice to do so.

Previous case law, which still applies, established that the general duty is unlikely to be satisfied if decisions are taken without conducting an assessment of their equality impact.

The Equality and Human Rights Commission says that public authorities are unlikely to be able to demonstrate that they have met the general duty unless they comply with the specific duty.

Members working for agencies responsible for auditing or inspecting public authorities are bound by the duty to promote disability equality in all aspects of their work. Further advice is available from the EHRC.

More information

The government's Quick start guide to the Public Sector Equality Duty – www.gov.uk/government/publications/public-sector-quick-start-guide-to-the-public-sector-equality-duty

Equality and Human Rights Commission guidance on the Public Sector Equality Duty – www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty

TUC Equality Duty Toolkit – www.tuc.org.uk/sites/default/files/extras/equality_toolkit.pdf

Schedule 19 of the Equality Act contains a broad list of public bodies that the PSED applies to. Being listed in the schedule also means that a government minister can impose specific duties on that body. See – www.gov.uk/government/publications/equality-act-2010-schedule-19-consolidated-april-2011

5. The Public Sector Equality Duty in Scotland

The Public Sector Equality Duty applies to all public sector organisations in Scotland as it does in England and Wales. See page 19 for a description of the general duty.

Public authorities must take account of people's disabilities in regard to meeting their needs under the general equality duty. This may involve treating some people more favourably than others. In the employment context, this means the duty to provide reasonable adjustments – see page 15.

As well as the duty to eliminate discrimination, advance equality of opportunity and foster good relations (the general duty), public sector organisations are also required to undertake specific duties to meet these requirements.

This is a summary of what listed public sector organisations in Scotland must do to comply:

Report on mainstreaming the equality duty

Public authorities in Scotland must publish a report on the progress they have made on the general duty every two years. The report must also provide: an annual breakdown of the information the authority has gathered on its employees and details of the progress made in using that information to meet its duties.

A number of listed public authorities must also publish the number of men and women who have been members of the authority or management board. They must also report on the steps taken, and the steps they intend to take, to ensure diversity.

Publish equality outcomes and report progress

Public bodies must publish a set of equality outcomes to enable them to better perform the general equality duty at least every two years. A refreshed set of outcomes must be published within four years.

The public authority must involve people who share a protected characteristic and anyone who represents them. If the outcomes do not achieve the desired results in relation to every protected characteristic, the reasons for this must also be published. A progress report must be published every two years.

Assess and review policies and practices

An impact assessment of any new or revised policy or practice must be carried out and the results of the assessment must be published within a reasonable time, if the policy or practice under consideration is to go ahead. Existing policies and practices must also be reviewed and assessed.

Gather and use employee information

Public authorities must gather information on the composition of their employees, in relation to the protected characteristics. This must include recruitment, development and retention of employees. The information must be used to comply with the general equality duty.

This gives reps the opportunity to request the data, analyse it and seek to make improvements where needed.

Use information on members or board members gathered by Scottish ministers

Scottish ministers must provide listed public authorities with information they have gathered on the protected characteristics of the members, or board of management, of that authority. That information must be used by the public bodies to comply with their general equality duty and say how they have used it to improve diversity in the two-yearly reports.

Scottish ministers are also required to publish proposals to enable listed public authorities to better comply with the general equality duty.

Publish gender pay gap information

Every two years, public authorities with at least 20 employees must publish information on the percentage difference among its employees of the gender pay gap.

Publish statements on equal pay

Every four years, public authorities with at least 20 employees must publish a statement on equal pay which includes the organisation's policy on equal pay and information on occupational segregation.

Consider award criteria and conditions in relation to public procurement

Public authorities must have due regard to the equality duties in relation to its procurement activities.

Publish in a manner that is accessible

All published reports must be accessible to the public. The EHRC Scotland website lists exceptions to the application of the general and specific duties and the listed public authorities subject to the duties in Scotland. www.equalityhumanrights.com/en/public-sector-equality-duty-scotland

Negotiators and reps can use the specific duties to hold employers to account, particularly on the published information and the need to carry out equality impact assessments.

More information

www.equalityhumanrights.com/en/advice-and-guidance/guidance-scottish-public-authorities

6. The Public Sector Equality Duty in Wales

The Public Sector Equality Duty applies to all public sector organisations in Wales as it does in England and Scotland. See the previous section for a description of the general duty.

The legislation is clear that meeting different needs includes (among other things) taking account of the needs of disabled people.

As well as the duty to eliminate discrimination, advance equality of opportunity and foster good relations (the general duty), public sector organisations are also required to undertake specific duties to meet these requirements.

The specific duties in Wales came into force in April 2011 and are set out in accompanying regulations to the Equality Act.

The Equality and Human Rights Commission in Wales has produced guides to help public bodies meet their specific duties.

This is a summary of what listed public sector organisations in Wales must do to comply:

Objectives

Public bodies must publish their objectives to meet the general duty for each protected characteristic and publish a statement setting out the steps they have taken, or intend to take, to meet those objectives. The public body must also monitor progress.

The objectives must include evidence of having due regard to the need to address the causes of any pay differences related to any of the protected characteristics and address any gender pay gaps.

If the public body does not publish objectives for each protected characteristic, it must explain why. The objectives must be reviewed at least once every four years.

Strategic equality plans

Public bodies in Wales must have a strategic equality plan which must include:

- their equality objectives, including pay objectives
- the steps they have taken, or intend to take, to meet their objectives and the timescale
- arrangements to monitor progress on meeting the objectives and the effectiveness of the steps they are taking to meet those objectives
- arrangements to identify and collect relevant equality information, including engagement with protected groups, pay differences related to a protected characteristic and the causes of those differences
- arrangements for publishing relevant equality information as appropriate
- arrangements for:
 - impact assessments of any policies and practices that an authority is proposing, reviewing or revising on protected groups

- monitoring actual and ongoing impact
- publishing reports where an assessment shows a substantial impact (or likely impact) on an authority's ability to meet the general duty
- details of training needs on the equality duties for employees
- an action plan relating to gender pay objectives.

Engagement

Organisations must involve representatives from each of the protected characteristics, and any others it considers appropriate to consult, on how it meets its general and specific duties.

Therefore, public authorities in Wales should consult disabled people and/or disabled advisory groups. This applies to the provision of services and employment issues.

Assessing impact

Organisations must carry out and publish impact assessments of proposed policies and practices. The reports must contain specific detailed information (see the EHRC guidance).

Equality information

Public bodies must collect relevant information on meeting their duties, including differences in pay and the causes of any such differences between employees who have a protected characteristic and those who do not.

Employment information

Every year, public authorities in Wales must publish information for each protected characteristic on the numbers of:

- people employed
- men and women employed, broken down by: job, grade, pay, contract type, working pattern
- people who have applied for jobs over the previous year
- employees who have applied to change their position within the authority, including success rates
- employees who have applied for training, including success rates, and those who have completed the training
- employees involved in grievance procedures
- employees who have left their employment.

This gives reps the opportunity to request the data, analyse it and seek to make improvements where needed.

Pay differences

Public sector bodies must have due regard to the need to have objectives that address the causes of any difference in pay between employees with protected characteristics and those who do not share that characteristic.

They must identify, collect and publish information about differences in pay and the causes of the differences.

There must be a specific equality objective on addressing gender pay differences. An action plan setting out the steps they have taken, or intend to take, and how long they are expected to take to fulfil that objective, must be published.

Staff training

Public bodies must ensure that their employees are trained on understanding and complying with the general and specific duties.

Procurement

Public authorities in Wales must have due regard to including criteria on meeting the general equality duty when procuring works, goods or services from other organisations.

Public authorities are responsible for meeting the general duty, even where services have been contracted out.

However, the organisation carrying out the service will be carrying out a public function and therefore subject to the general duty.

The specific duties may apply to contracts in certain circumstances – see the EHRC guidance.

Annual reporting

Public bodies in Wales must produce annual reports, specifically setting out:

- the steps they have taken to identify and collect relevant information
- how they have used this information to meet the general duty
- reasons for not collecting relevant information
- a statement on the effectiveness of the arrangements for identifying and collecting relevant information
- progress towards fulfilling the equality objectives
- a statement on the effectiveness of the steps they have taken to fulfil each of their equality objectives
- specified employment information, including information on training and pay.
- Welsh ministers' reporting

Welsh ministers are subject to all of the specific duties and must publish a report on how devolved public authorities in Wales are meeting their general duty.

The report must set out progress by public authorities and proposals to coordinate action in Wales. It must be published every four years and an interim one every two years.

Review

Public bodies must keep their equality objectives, strategic equality plan, action plans and all arrangements for meeting these specific duties under review. Revisions to any of the arrangements must be published in an accessible format at the earliest opportunity.

Accessibility

All published information on the general and specific equality duties must be in an accessible format.

There are some exceptions to the application of the general and specific duties in Wales. See the EHRC guidance for more detail.

The Wales EHRC guidance says that to comply with the general equality duty, relevant bodies should consider meeting the needs of disabled people by treating them more favourably than others.

In the employment context, this means the duty to provide reasonable adjustments – see our separate guidance on this.

The EHRC in Wales has also said that the enhanced public sector equality duties have made a real difference towards raising the profile of equality and increased transparency and accountability.

In addition, non-devolved public bodies in Wales and other organisations have used the PSED to promote equality and diversity.

Negotiators and representatives can use the specific duties in Wales to hold employers to account, particularly on the published information and the need to carry out equality impact assessments.

More information

Equality and Human Rights Commission: Guides to the PSED in Wales – www.equalityhumanrights.com/en/advice-and-guidance/guides-psed-wales

TUC Equality Duty Toolkit – www.tuc.org.uk/sites/default/files/extras/equality_toolkit.pdf

7. What happened to the Two Ticks symbol?

The two ticks symbol was a way for employers to demonstrate their commitment to employing disabled people and was administered by Jobcentre Plus.

The scheme was replaced by the Disability Confident scheme, which is run through the Department for Work and Pensions

It is an accreditation scheme which helps businesses to attract, recruit and retain disabled employees. There are three levels of accreditation: Committed, Employer and Leader. Each accreditation lasts for three years.

The government aims to work with employers through this scheme to:

- challenge attitudes towards disability
- increase understanding of disability
- remove barriers
- ensure that disabled people have the opportunities to fulfil their potential and realise their aspirations.

Level 1: Disability Confident Committed

To be accredited as Disability Confident Committed, employers only need to agree to the commitments and identify at least one action to carry out to make a difference for disabled people:

Commitments:

- inclusive and accessible recruitment
- communicating vacancies
- offering an interview to disabled people
- providing reasonable adjustments
- supporting existing employees.

The last two points are already requirements under the Equality Act.

Activities:

- work experience
- work trials
- paid employment
- apprenticeships
- job shadowing
- traineeships
- internships

- student placements
- sector-based work Academy placements.

Level 2: Disability Confident Employer

Employers must sign up for Level 1 before they can progress to the next level. The self-assessment for Level two has two themes: getting the right people for the business and keeping and developing staff.

For each theme, employers must agree to take the actions listed in the guidance and one of the activities. The commitments and actions are an expanded list of those in Level 1.

An online self-assessment and evidence template must be completed to demonstrate compliance with this level.

Level 3: Disability Confident Leader

The government says that by signing up to be a Disability Confident Leader, organisations will act as champions for Disability Confident within local and business communities. This involves encouraging and supporting other businesses in supply chains and networks to become Disability Confident.

Three additional steps need to be taken to comply with Level three:

1. Challenge:

- the Level two self-assessment must be independently validated and the organisation carrying out the validation identified
- the validators must agree with the evidence and assessment provided by the employer and that they are delivering against all the core actions as a Disability Confident Employer
- disabled people are employed by the organisation

2. Leadership:

- a narrative of the activities being taken, or that have been taken to support being a Disability Confident Leader, must be provided

3. Reporting on disability, mental health and well-being:

- action being taken to record and report on disability, mental health and well-being in the workplace by reference to the Voluntary Reporting Framework.

Employers receive a certificate and are able to use the scheme's logo on their website and other materials once they have achieved a level.

The first two levels of the scheme can be reached by self-assessment; the third level requires external assessment and validation.

The disability movement and unions have questioned the scheme's effectiveness because so much of it is based on self-assessment; the commitments and actions are not verified until Level three.

In addition, employers don't even have to submit the self-assessment forms to the DWP.

Research from the Equality and Human Rights Commission has shown that employers fear using positive action to address inequality for disabled workers.

Therefore, unions have a role in ensuring that employers don't just pay lip service to these types of schemes.

Reps should ensure employers follow best practice on recruiting, developing and retaining disabled staff.

They can do this by holding them to account on the commitments they have signed up to through the Disability Confident Scheme – and the requirements under the Equality Act to ensure equality for disabled people.

You can find further detail and guidance here: www.gov.uk/government/collections/disability-confident-campaign



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PRO-19-0058/NOV19/PDF

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