

An employer's guide to reasonable adjustments under the DDA

edition 2

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a Central London Law Centre publication

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Introduction

The employer's duty to make reasonable adjustments is at the heart of the Disability Discrimination Act 1995. This Guide sets out the law and provides examples of appropriate adjustments, good practice, and sources of further ideas.

Every individual experiences his or her disability very differently. It is crucial not to make generalisations. Some people will experience little effect on their day-to-day activities and will manage at work quite easily. Others will have severe effects. It is therefore essential to listen to what workers say about the daily effects of their disability, and let them identify the difficulties they have at work.

It is also important for an employer to be aware that many people have "coping strategies" and have found ways around the effects of their disability. This can sometimes disguise the amount of effort involved and the need for adjustments.

When employers gain information and knowledge by some advance research into the relevant disability, it should help build the worker's confidence as well as giving managers ideas of areas to explore with the worker.

This Guide has not been written by a doctor and is not intended to provide medical information or advice.

The Guide is based on the law as it is as known at 1st February 2009. However, it is designed to encourage good practice and is not a substitute for appropriate legal advice. The author can take no responsibility for actions taken based on the information contained in the booklet.

Many thanks to solicitors Philip Tsamados (Pollecoff solicitors) and Catherine Scrivens (Central London Law Centre) and training consultant John Twitchin (Diversity Works Ltd) for their helpful comments and suggestions. Thanks also to Nuffield for funding this publication.

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Overview

The main things you need to know about the Disability Discrimination Act 1995 (“DDA”).

- The DDA covers discrimination in several areas including employment (part II) and the provision of goods, facilities and services (part III). The law is similar in each area but not identical. This guide only concerns discrimination in employment.
- The Equality and Human Rights Commission (EHRC) is the body with responsibility for overseeing the operation of the DDA as well as other areas of discrimination law. It offers practical guidance to employers for ensuring disabled people are treated fairly.
- There are numerous specialist organisations for different disabilities which provide useful advice and guidance to employers. Many of these are referenced in this guide.
- There is no longer a small employer exemption. All employers must comply with the DDA.
- The DDA covers job applicants and anyone who works for you on a personal basis or through an agency or contracted service provider. There is no minimum service requirement.
- There must be no discrimination at any stage of employment, eg recruitment, terms and conditions, promotion, handling of grievances and disciplinary action, dismissal and post-employment references.
- The DDA protects workers who have a disability as defined by the DDA. This is a technical definition, which can be difficult to apply. There is also legal *Guidance* on the definition. Its full title is *Guidance on matters to be taken into account in determining questions relating to the definition of ‘disability’*.

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- Employees with at least one year's service have unfair dismissal rights. Even if an employee is not covered by the DDA, he or she must still not be unfairly dismissed due to ill-health or injury. However, the DDA gives additional rights.
- The most important part of the DDA is the employer's duty to make reasonable adjustments for a job applicant or worker where he or she has difficulties or is at a disadvantage in some way due to his or her disability.
- The duty to make reasonable adjustments can include treating the disabled worker more favourably than other workers. This is not preferential treatment. It is correcting a disadvantage.
- An employer must not discriminate against a worker on grounds of disability or for a disability-related reason.
- You should have a copy of the Disability Rights Commission's Code of Practice. It gives many examples of reasonable adjustments. The Code is simple to understand, although rather long at over 200 pages. A hard copy can be ordered online from TSO or telephone 0870 600 5522. It can also be downloaded from the EHRC's website at www.equalityhumanrights.com/en/publicationsandresources/Pages/CodeofPracticeEmploymentandOccupation.aspx
- Workers who feel they have been discriminated against can bring a case in an employment tribunal. The tribunal can award compensation for financial loss, injury to feelings, injury to health and interest. Average compensation awarded in disability discrimination cases during 2007 was £20,928. In over 50% cases, awards were over £10,000. The highest award was for £187,614.
- In 4th December 2006, a new public sector disability duty was introduced, requiring public bodies to carry out their functions with due regard to the need to eliminate discrimination against disabled people and to promote positive attitudes towards them. The duty is broadly similar to the duty to promote race equality introduced by the Race Relations (Amendment) Act and the gender duty in the Sex Discrimination Act.

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Who is “disabled” under the DDA?

The Disability Discrimination Act (DDA) protects workers who have a disability as defined in the Act. You may be surprised at the many forms of impairment which are covered.

Far more people meet the definition of disability under the DDA than qualify for statutory sick pay or incapacity benefit. According to the Department for Work and Pensions, every three months over 600,000 workers become sick or disabled using the definition of disability under the Disability Discrimination Act.

The DDA does not simply cover visible disabilities such as the need to use a wheelchair.

In fact, only 5% of disabled people are wheelchair users. The DDA can cover:

- ❑ Physical and visible impairments.
- ❑ Sensory impairment.
- ❑ Invisible conditions, eg epilepsy or diabetes.
- ❑ Mental illness, eg depression or anxiety disorder.
- ❑ Other mental impairment, eg learning difficulties or dyslexia.
- ❑ Physical illness, whether temporary, permanent or fluctuating.
- ❑ Temporary injury, eg caused by an accident at or outside of work.
- ❑ Temporary incapacity, eg immediately before, during and after an operation.

Almost any condition can be covered by the DDA provided it is sufficiently serious and lasts (or will last) at least 12 months. The directory at pages 39 – 100 lists many commonly covered conditions.

The question is not whether the named disability is covered by the DDA. It is whether the particular worker with the disability is covered. This will depend on the nature, severity and duration of the disability in the worker's individual circumstances.

In practical terms, there is no difference between what is conventionally known as a disability and what is regarded as an illness or health problem. The legal definition can apply to both. Sickness or injury which lasts 12 months or more and has notable adverse effects comes under the DDA.

Many unnecessary cases come to the tribunal because employers do not realise that the worker's condition is indeed covered by the DDA.

The legal definition

To meet the definition:

- A worker must have a physical or mental impairment.
- The impairment must have a substantial adverse effect.
- The effect must be on the worker's ability to carry out day-to-day activities under at least one of the categories listed in the DDA.
- The effect must be long-term.

The day-to-day activities

The categories of day-to-day activities listed in the DDA are intended to cover almost any disability:

- Mobility. This includes sitting, standing, climbing stairs.
- Manual dexterity.
- Physical coordination.
- Continence.
- Ability to lift, carry or move everyday objects.
- Speech, hearing or eyesight.
- Memory or ability to concentrate, learn or understand.
- Perception of the risk of physical danger.

Adverse effect

It is not necessary that the worker is entirely unable to carry out a particular activity. It is enough if:

- The activity causes pain.
- The activity causes fatigue, either on doing the activity once, or on repeating it over a period of time.
- The worker has been medically advised to refrain from the activity or only to do it in a certain way or under certain conditions.
- The effect is worse at certain times of day or at certain temperatures, or when the worker is tired or under stress.
- The worker can only do the activity in a restricted or different way, eg using a shoulder bag when unable to carry a bag by hand or unloading shopping trolleys in small quantities.

Substantial adverse effect

Many conditions may or may not be a disability according to the impact on the particular individual. For example, one worker with a back impairment may be disabled, whereas another may not. The key factor is usually the seriousness of the effects of the impairment.

The DDA talks about the impairment having a “substantial” adverse effect. The legal *Guidance* says “substantial” simply means something more than minor or trivial.

It is also possible that the impairment will not have a substantial adverse effect on any single one of the listed activities, but may have a minor effect on several of them which adds up to a substantial adverse effect.

The effect without medication

Where the effect of the impairment is reduced or controlled by medication, medical treatment or an aid, its impact should be measured as it would be without such medication. This is known as the “deduced” effect.

This may seem odd, because the medication may be so effective that the worker appears to have no difficulty carrying out his or her work duties. However, the DDA is only concerned at this stage with whether someone meets the definition of having a disability. If a worker requires medication to keep the effects of an impairment at bay, then he or she is disabled.

For example:

- A worker’s ability to hear should be assessed without the benefit of any hearing aid he or she wears.

- Where a worker’s depression is alleviated by counselling sessions with a clinical psychologist, the effect should be assessed as it would be if he or she were not receiving such counselling .

The only exception is where sight is improved by glasses or lenses.

The definition focuses on what the worker cannot do

Employers can underestimate the effect of a disability because they are concentrating on everything which the worker is able to do.

But this is misleading. Legally, it does not matter that the worker can generally cope with life and can carry out most normal activities. It is enough that there is a substantial adverse effect on just one of the listed activities.

Unfortunately the law requires a rather negative approach in this way and it is necessary to be sensitive. You should also be aware that many disabled people “play down” the effect of their disability.

Progressive conditions

If the worker has a progressive condition, he or she is protected as soon as it has any effect at all on a day-to-day activity, if it is likely that in the future, the effect will become substantial. An example may be rheumatoid arthritis or muscular dystrophy.

Long-term effects

The substantial adverse effect must also be long-term, ie 12 months or for the rest of the worker's life if less than 12 months. It does not matter if, at the time of the discrimination, 12 months have not yet passed.

The law covers impairments with fluctuating or recurring effects if these are still likely to recur beyond 12 months after the first occurrence. Examples of impairments with recurring effects could be rheumatoid arthritis, epilepsy, or clinical depression.

Special cases

Certain conditions are automatically deemed a disability as soon as they are diagnosed, ie (the first three since 5th December 2005):

- Multiple Sclerosis.
- HIV.
- Cancer.
- Workers registered with a local authority or certified by a consultant ophthalmologist as blind or partially sighted.
- Severe disfigurement (provided it is long-term).

Excluded conditions

Certain impairments are explicitly excluded, eg seasonal allergic rhinitis (eg hay fever), tattoos and ornamental body piercing, and various anti-social personality disorders, eg tendency to set fire, to physical or sexual abuse, to voyeurism or exhibitionism.

Addictions to alcohol, nicotine or other substances are not covered unless the addiction was originally the result of medical treatment or medically prescribed drugs, eg valium or other tranquillisers and sleeping pills.

A separate disability which is caused by an addiction, eg liver damage caused by alcoholism, is covered by the DDA.

Failing to recognise the worker's disability

It is a continual problem that many employers do not accept workers need reasonable adjustments and maybe do not even believe a worker has a disability, because he or she appears to be coping at work and home. But appearances can be very deceptive. The amount of effort which a worker puts into an everyday task may not be apparent to the employer. Due to such misunderstandings, employers may delay too long in obtaining necessary equipment and can wrongly accuse workers of making excuses for slow or inaccurate work.

“Experience shows that disabled persons often adjust their lives and circumstances to enable them to cope for themselves.... Furthermore, disabled persons are likely, habitually, to 'play down' the effect that their disabilities have on their daily lives. If asked whether they are able to cope at home, the answer may well be 'yes', even though, on analysis, many of the ordinary day-to-day tasks were done with great difficulty due to the person's impaired ability to carry them out.”

Employment Appeal Tribunal: Goodwin v The Patent Office.

Past disabilities

The DDA also forbids discrimination against someone because he or she had a disability in the past eg, an employer may be reluctant to employ someone who has had depression or cancer in the past, for fear that it may recur.

Checklist key points on definition

- The meaning of disability is far wider than you may have realised.
- Do not assume that because a disability is invisible, it does not exist.
- Whether workers are covered by the DDA often depends on the severity of the effects of their impairment. Workers themselves are the best guide to this.
- Remember that many workers play down the effect of their disability.
- It is good practice not to argue about whether or not someone is covered by the DDA, but to consider reasonable adjustments in any event.

What is disability discrimination?

There are five different forms of discrimination under the DDA. The following is only a brief summary. Remember that discrimination can be unintentional or even unconscious. We are all influenced by unconscious assumptions and perceptions.

"A truthful witness may indeed be unconsciously or inadvertently influenced by improper considerations of which he or she is not personally aware."

Employment Appeal Tribunal in Williams v YKK(UK) Ltd

1. Failure to make reasonable adjustments

This duty is at the heart of disability discrimination law. Where any workplace practice or feature of the premises puts a disabled worker at a disadvantage, the employer must make all adjustments which are reasonable to remove that disadvantage.

Many employers do not realise quite how far they must go to meet this duty. Pages 00-00 of this Guide set out the law on reasonable adjustments. Pages 00-00 suggest adjustments which may be relevant to a variety of different disabilities.

2. Direct discrimination

It is unlawful to treat a worker less favourably or differently *on grounds of* his or her disability.

For example:

- an employer refuses to recruit a disabled worker just because he or she does not like disabled people.
- an employer dismisses a disabled worker because the worker has taken 3 months' sickness absence. The employer does not dismiss a non-disabled worker who has taken the same amount of sick leave. There is no good reason for the difference in treatment. This suggests the true reason is the worker's disability.

Provided the reason for the different treatment is the worker's disability, there is no defence. The concept of direct discrimination under the DDA is equivalent to that of direct sex discrimination under the Sex Discrimination Act.

3. **Disability-related discrimination**

It is unlawful to treat a worker less favourably *for a reason related to* his or her disability.

The usefulness of this definition has been reduced following the key housing case, *L B Lewisham v Malcolm*. In the realm of employment law, nearly all situations will now be covered by the duty to make reasonable adjustments.

4. **Harassment**

Harassment takes place where, for a reason that relates to the disabled person's disability, the harasser engages in 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 or her. This concept is the same as under the other discrimination legislation.

5. **Victimisation**

Workers must not be punished because they have raised an issue of disability discrimination or reasonable adjustment with the employer, whether informally or in a grievance, or even if they have taken a case to tribunal.

For example: a worker brings a grievance that the employer has failed to promote her because of her disability. Shortly afterwards, the employer makes her redundant when there is no genuine redundancy situation.

Other workers are also protected if they raise a matter on behalf of a disabled worker or act as a witness at a grievance or tribunal case.

It does not matter that the worker is mistaken when he or she alleges discrimination, as long as he or she believes it and is in good faith.

The duty to make reasonable adjustments

The most important part of the law against disability discrimination is the duty on employers to make reasonable adjustments. Basically this means employers must take reasonable steps, eg to adjust hours or duties, buy or modify equipment or allow time off, so that the worker can carry out his or her job.

In a 2008 research report by the Office for Disability Issues, more than quarter of the employees who had left their job for a reason related to their disability felt that more could have been done to keep them in work. Most of the adjustments which they would have wanted simply related to support and understanding from managers and colleagues.

Employers tend to think of adjustments as likely to be expensive and inconvenient. Research indicates that this is not true.

“72% of employers who had made changes said that it had been easy to make the adjustments, while only 14% said that it had been difficult.”

DWP Research.

What does the Disability Discrimination Act say?

The duty is set out in section 4A(1) of the DDA, which says:

“Where -

(a) a provision, criterion or practice applied by or on behalf of an employer, or
(b) any physical feature of premises occupied by the employer,
places the disabled person concerned at a substantial disadvantage in comparison with persons who are not disabled, it is the duty of the employer to take such steps as it is reasonable, in all the circumstances of the case, for him to have to take in order to prevent the provision, criterion or practice, or feature, having that effect.”

This just means an employer must take all reasonable steps to make adjustments and remove barriers which put disabled workers or job seekers at a disadvantage.

The duty is also owed to contract workers, eg workers supplied through an agency or working for a contractor.

The employer has the duty if he or she knows or should know that the worker is disabled. The duty is owed even if it is only personnel staff – and not the line managers - who are aware of the disability.

What kind of adjustments must be made?

The DDA lists the following possible adjustments:

- ❑ Making adjustments to premises.
- ❑ Allocating some of the disabled person's duties to another person.
- ❑ Transferring him or her to fill an existing vacancy.
- ❑ Altering his or her hours of working or training.
- ❑ Assigning him or her to a different place of work or training.
- ❑ Allowing him or her to be absent during working or training hours for rehabilitation, assessment or treatment.
- ❑ Giving, or arranging for, training or mentoring (whether for the disabled person or any other person).
- ❑ Acquiring or modifying equipment.
- ❑ Modifying instructions or reference manuals.
- ❑ Modifying procedures for testing or assessment.
- ❑ Providing a reader or interpreter.
- ❑ Providing supervision or other support.

If you want some ideas and examples as to what might fit within the scope of the listed suggestions, you should look up paragraph 5.18 of the Code of Practice.

The list in the DDA only makes suggestions. A tribunal may expect you to have made other appropriate adjustments, which are not in the list.

“The whole essence of reasonable adjustment is that you do something in a different way from your normal standard policy in order to overcome a disadvantage to a certain person, which would otherwise be suffered.”
Employment tribunal.

Case law has established that:

- Where there is a potential disadvantage to a disabled worker, failure to carry out a proper risk assessment is likely to lead to failures to make reasonable adjustment.

- Where a worker becomes so disabled that he or she is no longer able to do his or her job at all, a reasonable adjustment may be to move him or her to another job, even at a slightly higher grade, without competitive interview.
- An employer must not give priority to other categories of redeployee, eg those at risk of redundancy, over a disabled worker.
- The duty is restricted to job-related matters and does not extend to providing a carer for a worker's personal and toilet needs. However, there may be a duty to provide accessible toilets or accommodate a carer who the worker brings with him or her.

Where it is necessary to make adjustments to premises which are occupied under a lease, there are special rules enabling such adjustments to be made, even where the lease forbids it or the landlord unreasonably withholds consent. (Chapter 12 of the Code of Practice provides a useful introduction to the relevant law.)

How much must an employer do?

A tribunal will decide on the facts of each individual case how much the employer ought to have done by way of reasonable adjustment.

Employers are expected to act positively and constructively. The House of Lords has made it very clear that a lot is expected of employers in the key case of *Archibald v Fife Council*. The House of Lords said:

“The DDA does not regard the differences between disabled people and others as irrelevant. It does not expect each to be treated in the same way. The duty to make adjustments may require the employer to treat a disabled person more favourably to remove the disadvantage which is attributable to the disability. This necessarily entails a measure of positive discrimination.”

The House of Lords' use of the term “positive discrimination” is unfortunate. It is simply a case of removing unnecessary barriers, to place disabled people on an equal footing. However, it does illustrate how far employers must go.

Relevant considerations

When a tribunal decides whether an employer should have made certain adjustments, it will take into account the following factors in particular:

- ❑ The extent to which taking the step would prevent the effect in relation to which the duty is imposed.
- ❑ The extent to which it is practicable for the employer to take the step.
- ❑ The financial and other costs which would be incurred by the employer in taking the step and the extent to which taking it would disrupt any of the employer's activities.
- ❑ The extent of the employer's financial and other resources.
- ❑ The availability to the employer of financial or other assistance with respect to taking the step.
- ❑ The nature of the employer's activities and the size of undertaking.
- ❑ Where the step would be taken in relation to a private household, the extent to which taking it would (i) disrupt that household, or (ii) disturb any person residing there.

A reasonable adjustment need not be guaranteed to work in advance.

Examples of the type of adjustments expected by tribunals can be found in the checklists and case-studies in the digest on pages 39 - 100.

The employer's resources

An employer is expected to incur some costs in making adjustments if necessary. How much an employer should spend, depends on its size and whether grants are available.

A large employer with substantial financial resources is more likely than a small employer to have to make adjustments which are very expensive. If a shop or restaurant is part of a chain, the resources of the whole chain will be taken into account.

The Code of Practice says it is good practice to have a specific budget for reasonable adjustments, as long as it can be exceeded as and when necessary.

An employer cannot hide behind a set budget. All relevant factors will be considered in each case.

If an employer takes someone on, knowing he or she is likely to need adjustments, then the tribunal would expect those adjustments to be carried out.

The cost of recruiting and training a replacement for the disabled worker, both in terms of management time and money, should be set off against the cost of making adjustments when deciding how much expenditure is reasonable.

In fact, reasonable adjustments often involve little or no cost or disruption.

Available grants from the Access to Work Scheme

The Access to Work programme is administered through Jobcentre Plus and may provide grants towards the cost of various adjustments. Many employers are unaware of the existence of Access to Work.

Workers are eligible if they have a disability or health condition which affects their work and is likely to last for at least 12 months. It applies to any paid job or interview for that job, whether full-time or part-time, permanent or temporary. It does not matter whether the worker is already in a job or about to start.

The programme may provide a grant towards various adjustments including adapting premises; adapting or purchasing equipment; providing readers or interpreters; and additional travel costs to work. It can also pay for interpreters or signers at a job interview.

For workers starting new jobs or in their first 6 weeks, the programme will pay up to 100% of approved costs. For those already in a job for more than 6 weeks, it will pay a proportion of the costs, so that the employer pays the balance. The precise level of cost sharing is agreed between you and the Access to Work adviser. The programme will also pay approved costs up to 100% for help with support workers, fares to work and support at interviews.

Usually the employer then purchases the equipment, etc and reclaims the grant from Access to Work.

Grants will be reviewed after 1 – 3 years.

To get advice about the scheme and an assessment of the worker's needs, the worker needs to fill in an application form and he or she will then be contacted by an Access to Work adviser. A Jobcentre Plus office, Disability Employment Adviser (see below) or Access to Work Business Centre can give contact details.

The adviser will then usually speak to the worker and to the employer on the telephone, and visit the workplace if necessary.

The Access to Work adviser can also arrange specialist or technical advice if it is needed. For example, if the adviser is unable to make his or her own assessment as to what is needed for a particular worker who is blind, he or she may arrange for the RNIB to make an assessment and appropriate recommendation.

Once the Access to Work adviser has decided on the appropriate level of support, he or she gets formal approval from Jobcentre Plus. He or she then sends a letter to the worker and the employer setting out the available grant.

It is the employer's responsibility to buy the necessary equipment and reclaim approved costs from Access to Work.

For latest details on levels and eligibility for grants, it is important to check with an Access to Work Adviser. Information used to be provided on the Jobcentre Plus website (www.jobcentre.plus.gov.uk/JCP/index.html) but this seems to have been reduced and you are advised to contact the Access to Work team in your region - the Access to Work Team addresses are listed on the site's Access to Work page (currently

www.jobcentreplus.gov.uk/JCP/Employers/advisoryservices/diversity/Dev_015798.xml.html)

Alternatively, there is a little more information on the Directgov site at www.direct.gov.uk/en/DisabledPeople/Employmentsupport/WorkSchemesAndProgrammes/DG_4000347

Note that Access to Work Advisers will not give legal advice on what comprises a reasonable adjustment under the law.

The fact that you have obtained an assessment or grant under the Access to Work Scheme does not necessarily mean that you have satisfied your duty to make reasonable adjustments.

A management strategy

AN INTEGRATED STRATEGY

- Research in the UK and the USA suggests that the prospect of successfully accommodating a disabled employee in a workplace is greatly improved when the organisation has a comprehensive disability management strategy capable of drawing on the expertise of occupational health professionals, health and safety specialists, human resources practitioners and trade union representatives.
- You should ensure you have a separate disability policy, not just an all-embracing equal opportunities policy.
- You should ensure staff at local workplaces are aware of the policy and its practical implications.

THINK AHEAD

- Think in advance about ways to make your practices and premises more accessible generally. This can save money later. For example:
 - when installing a new telephone system, ensure it is compatible with technology making it accessible for visually or hearing impaired workers, even if none of your current employees have those requirements.
 - brief your building works department so that whenever building works are carried out, steps can be taken to improve accessibility, eg using colour contrasts when repainting; choosing easy-open doors; using lever rather than screw taps.
- Increase consultation with disabled workers in advance of any re-organisation.

STANDARDISE ACCESSIBLE PRACTICE

- Review systems to see where easy changes can be made to standard practices, eg:
 - always use matt rather than glossy paper for notices and memos.
 - ensure corridors and floor space are kept clear.
 - ensure a healthy stress-free workplace. The Health and Safety Executive's Management Standards are available on www.hse.gov.uk/stress/index.htm

Building confidence

As with all staff, it is important to establish rapport and hold the confidence of disabled workers. Knowing something about appropriate “etiquette” and language, helps build confidence. A few suggestions are set out below.

“I am not so interested in people building ramps for me as in changing people’s views on the disabled”

Ed Fletcher, solicitor. Following a motorcycle accident, he uses a wheelchair.

General approach

- Treat each person as an individual and an adult. Talk to the worker about what help he or she may need. Don’t be embarrassed to ask.
- Don’t make assumptions about a person’s abilities or requirements. Employers have lost many tribunal cases because of stereotyped assumptions that people with certain disabilities would be unable to do a job.
- Take expert advice where necessary, eg from occupational health, a person’s own GP or specialist, as well as from the worker him or herself.
- The specialist disability organisations can often provide background information about the nature of an impairment, details of reasonable adjustments and specific advice tailored to a particular individual.
- Generally make yourself informed, eg by looking at this Guide on pages 00-00, and by looking up the websites of specialist organisations. But remember each individual is the best source of information on his or her own needs.
- You can seek practical advice and assistance from Disability Employment Advisers and Access to Work Advisers at Jobcentres. Grants for adjustments may also be available. (See p16.)
- Not every disabled person will need workplace adjustments. Don’t assume this will always be necessary.

- Where adjustments are necessary which may affect other employees, it is a good idea to discuss this with the others in advance to secure cooperation. Only do this with the disabled worker's permission.
- However, unreasonable refusal of other employees to cooperate will not be a reason to avoid making any necessary and reasonable adjustment.
- Practical awareness training relevant to the worker's specific requirements may also be useful and prevent difficulties later.

Communication and language

- Talk to people as individuals. Concentrate on the worker's personality and what he or she is saying.
- Where the worker has an interpreter or helper, address yourself to the worker. Don't pet a guide dog while it is working.
- Don't intrude on a worker's personal space, eg by leaning on a wheelchair or grabbing the worker's arm to guide him or her.
- Don't be embarrassed. Look at and talk to the worker normally. Be patient if necessary.
- Don't be patronising. Don't say, "Considering she is disabled ... she has done a good job."

Language is important. It is not a question of being "politically correct". Many words have negative connotations, which can be hurtful to the worker and cause others to see or treat him or her unfavourably and without respect.

Acceptable language tends to change and you need to keep yourself up-to-date. These are some key points:

- Refer to "disabled people" or "people with disabilities". Currently there is no consensus on which is the preferred term, although the latter is becoming less popular. It is best to ask the individual which he or she prefers. Do not say "the disabled".
- Do not describe someone as, eg, "an epileptic". It is better to say it is "a person who has epilepsy".
- Refer to someone as "using a wheelchair" or a "wheelchair user". Do not say "wheelchair bound" or "confined" or "restricted to a wheelchair"

- Some old-fashioned terms are really upsetting and offensive nowadays. Say “a person with learning disability” or “difficulty” rather than “mentally handicapped”; “a person who has cerebral palsy” rather than “spastic”. Avoid words such as “crippled” and “retarded”.
- Avoid other negative words such as “suffering from” or “victim of”. Instead say that a person “has” or is “with” or “living with” the relevant impairment. “Visually impaired” is better than “visually handicapped”.
- Do not allow staff to describe a person with mental illness as “crazy” or a worker with learning difficulties as a “moron”. These words, sometimes used casually or through impatience, can be intensely hurtful.
- Do not use the word “normal” by way of contrast to disability. People without disabilities can be described as “non-disabled” or “able-bodied”.
- It is better to refer to “accessible” and “inaccessible” toilets, rather than “disabled toilets”.

THE MEDICAL MODEL vz THE SOCIAL MODEL OF DISABILITY

The distinction between the medical and the social model of disability is an important issue for disabled people. It is helpful if you are aware of the difference.

The medical model focuses on the individual’s impairment or condition as being the primary cause of disability. The individual does not meet the accepted social “norms”. This approach looks for medical ways to overcome the worker’s disadvantage.

The social model views the individual as “disabled by society”. Individuals with impairments are excluded from the mainstream of social activities because contemporary social organisation takes little account of them. This approach looks at adapting society and social and economic institutions.

The law set out in the Disability Discrimination Act has elements of each model. However, the central requirement on employers to make reasonable adjustments to remove barriers on a worker’s full participation, resembles the social model.

Reasonable adjustments: some ideas appropriate to many disabilities

The DDA lists possible reasonable adjustments (see p14), but these are only suggestions. A tribunal may think a certain adjustment should have been made which is outside that list. The following expands on some of those suggestions, and adds a few more possibilities. There are also further suggestions specific to different disabilities on pages 39 - 100.

Remember that any of the options could be carried out on a temporary, occasional or permanent basis.

As most conditions vary greatly in their severity and in the symptoms for every individual, it is essential to ask the worker what areas of difficulty he or she has at work and which solutions might be useful. It is also important not to make assumptions.

Risk assessments and avoiding false assumptions

The tribunal will expect you to start by carrying out a proper assessment (sometimes known as a “risk assessment”) of what may be required.

Farnsworth v London Borough of Hammersmith & Fulham and another
Ms Farnsworth had undergone treatment for depressive illness for 6 years. She was offered a post as residential social worker subject to medical assessment. The offer was withdrawn on grounds that she had not obtained satisfactory medical clearance.

The employment tribunal found this was unjustifiable discrimination. The employers had made an assumption, without good reason, that her attendance would be poor. This assumption was contradicted by a reference, which the employers had ignored and by the fact that Ms Farnsworth had been in good health for 17 months.

Winton v NV Tools Ltd

Mr Winton worked for a medium-sized engineering company for over 30 years. He developed MS, which by 1997, began significantly impair his capacity to do his full duties. Initially the employer made appropriate adjustments. But in 2000, the employer obtained a medical report, which said Mr Winton was unlikely to be able to continue working much longer. The employer did not show this to Mr Winton. Senior managers had increasing concerns about his ability to do the job, but they didn't take up the issues with him, as they normally would have done with other workers, because of his disability. Eventually, after the employer decided to make a significant pay cut in 2002, Mr Winton resigned.

The tribunal found this was unjustified disability discrimination. The employer had decided Mr Winton was unable to do his job based on stereotyped assumptions. There was no up-to-date medical advice or occupational health assessment, no meaningful discussion with Mr Winton, and no objective consideration of what adjustments could be made so that he might continue to be employed.

Once reasonable adjustments might be necessary, someone who understands disability should take over management of the situation.

In the Pousson case (p59), the employment tribunal said this:

"As soon as (the occupational health) report had been issued, someone with the necessary authority, competence and understanding of disability should have taken over the management of this situation and issued the necessary advice and guidance to the line managers. It is this fundamental failure on the respondent's part which has in the main given rise to many of the unhappy consequences that followed."

Flexible hours, work schedules and breaks

This may entail allowing the worker to work part-time, fewer hours or to job share, or to alter hours, eg to avoid rush-hour travel or because he or she feels less well in mornings or evenings. The worker may find it suitable to spread the work over a longer period with more frequent breaks. Workers with only episodic

attacks, eg asthma or migraine, may volunteer to make up the hours on other occasions, although they should not be forced to do so.

Whether an employer should continue to pay the full rate of pay, even though the worker is working shortened hours, is a matter of what is reasonable in every case.

In a survey by the Department of Work and Pensions, 55% of employers operated flexible working time. 57% of those who employed no disabled workers thought different hours or flexi-time would be easy to introduce. Moreover, employers are getting used to the idea in the context of the right to request flexible working for childcare.

The Disability Discrimination Act explicitly suggests altering the worker's hours of working or training as a potential adjustment. The Code of Practice gives these suggestions:

- Allowing the worker to work flexible hours so he or she can have additional breaks.
- Permitting part-time working.
- Allowing different working hours to avoid rush hour travel.

Home working

It used to be that many employers did not favour the idea of home-working. Obviously it depends on the job, but with the advent of sophisticated IT technology, this is now much more feasible than before. The 2004 Workplace Employment Relations Survey shows that homeworking has almost doubled since 1998. 26% of workplaces with 10 or more employees offer homeworking to some of their employees.

ACAS points out that homeworking can reduce costs by providing savings on office space. It can also improve productivity, as workers are not interrupted by day-to-day office chat. By removing travel and other stresses, it has been found to lower absence and turnover rates.

For information regarding a documentary training video, specifically on ways for people with disabilities to work from home, contact John Twitchin at Diversity Works Ltd: 0207 431 1712.

Home working, on a temporary, permanent or part-time basis, is a very useful solution for a number of conditions, because it gives increased flexibility in hours, cuts out difficult travel and may provide a more conducive environment. It is a suggestion which comes up frequently in the tribunal.

Home working, at least temporarily, is suggested as a possibility in some circumstances by the Code of Practice and by the Employment Appeal Tribunal in several cases.

In one case, it was said that a worker should be allowed to work from home on a temporary basis to maintain his or her skills, even if the job could not permanently be done from home.

Rehabilitation and gradual return to work

Where the worker has been absent for some time due to his or her disability, a phased return to work is likely to be a desirable option. The return can be phased in terms of number of daily hours, number of days/week or type of duties taken on. It can be combined with partial home working.

The Code of Practice confirms that a phased return to work with a gradual build-up of hours might be appropriate in some circumstances.

In one case where a secretary had been absent for some while with depression, the Employment Appeal Tribunal suggested that a phased return to work might be a reasonable adjustment.

Management of the worker's return is very important. If the worker's skills have become outdated due to a lengthy absence, it is likely to be a reasonable adjustment to retrain him or her.

Electronic Data Systems Ltd v Travis

Dr Travis was a highly qualified software engineer. He was off work from June 1997 to August 1999 through illness, ie schizophrenia. His IT skills were out of date on his return. His security clearance had also lapsed, which limited the number of jobs he could do. He was therefore placed on non-secret work as a temporary measure. As a result of restructuring in late 1999, Dr Travis became at risk of redundancy. He was at a disadvantage in seeking redeployment because of his lack of security clearance and rusty IT skills. In May 2000 he was made redundant. The tribunal said the employer had failed in its duty to make reasonable adjustments by failing to train Dr Travis on his return. Had he been trained, this would have overcome his disadvantage in seeking redeployment.

The Chartered Institute of Personnel and Development (CIPD) has produced a useful guide on its website www.cipd.co.uk – "Recovery, rehabilitation and

retention: maintaining a productive workforce". You can download via a link at www.cipd.co.uk/subjects/health/menthlth/recrehabretent.htm

It makes these key points, especially in the context of mental ill health and stress:

- It is generally easier to keep an employee in work through proactive recovery or retention schemes than by waiting for the worker to become long-term sick.
- The longer someone is off work, the less likely it is that they will return. Therefore it is important to begin the process of rehabilitation as soon as possible.
- The importance of effective case management for employees who require retention and rehabilitation cannot be over-emphasised. A dedicated case manager is best.
- One of the strongest factors in a successful outcome is the active involvement of a supervisor or manager from the beginning in the recovery or rehabilitation process.
- It is often helpful for the worker to select or be provided with a peer or mentor who can be available to provide support on a daily basis.
- The first day back to work can be a big hurdle. There must be someone to welcome the worker back and provide support. A small investment in support can make the difference between success and failure.
- It is essential to set realistic targets and to get the worker's commitment towards them. A lot of problems can be avoided if the worker is consulted about the rehabilitation programme. Presenting a developed programme can be daunting, whereas a discussion of options can be a more acceptable approach.
- If an employee is nervous about returning to work, it may help to come in first to meet his or her colleagues for a coffee.
- The process of rehabilitation can have setbacks. Focus on positive achievements rather than failures.
- Where cost-benefit analysis has been undertaken, the saving on sick pay and on recruiting a replacement has more than covered the costs of the interventions, There is the added benefit for the morale and image of the organisation.

Reallocation of some duties

The Disability Discrimination Act suggests some of the worker's duties could be allocated to another person. It may also be possible for the worker to swap certain duties with a colleague on a temporary or permanent basis.

Transfer to another job

It is unlikely that a tribunal would expect an employer to create an entirely new job for a disabled worker, but it may be a reasonable adjustment to reallocate or

swap duties (see above), transfer the worker to a different location or to an existing vacancy.

The Code of Practice points out that this may entail reasonable adjustments in the new job, eg retraining or provision of special equipment.

Other adjustments may also be needed to ensure the worker can successfully apply for a post. For example, in a case concerning a worker with colitis (see p75), the employer failed to make reasonable adjustment because the interview panel was not informed of the worker's disability so that the panel could assist him. The worker performed badly at the interview because he was unwell with stress as a result of other failures to make reasonable adjustments.

The duty to make reasonable adjustments may go further than enabling the worker to apply for vacancies. It would be unlawful to give redundant employees priority over any vacancies ahead of a worker needing redeployment due to a disability. Moreover, many tribunals expect a worker to be slotted into an existing suitable vacancy without being interviewed or having to compete for it against workers who do not have a disability.

In the key case of *Archibald v Fife Council* (see p15), the House of Lords said it could be a reasonable adjustment, depending on the circumstances, to move a worker to a slightly higher grade without competitive interview. In that case, a manual worker at the lowest grade had to be transferred to office-based duties, but the lowest grade of the non-manual scale was higher than the lowest manual grade.

Acquiring or modifying equipment

One of the reasonable adjustments suggested by the Disability Discrimination Act is to acquire or modify equipment.

This is a straightforward suggestion, which is usually easy to implement. It is surprising how many cases result from employers' delay in obtaining the correct equipment.

The range of equipment available is enormous and the specialist disability organisations provide the best advice on what is suitable. More detail is set out for different disabilities on pages 39 - 100.

Whether or not an employer is expected to provide special equipment will depend on its effectiveness, the cost and the employer's resources. However, the Access to Work Scheme covers the cost of much of this equipment (see p16).

Also, if an employer takes a worker on, knowing adjustments will be needed, he or she should see these through.

Surprisingly, many cases involve employers' failure to take relatively inexpensive and easy steps to provide specialist equipment. The following difficulties are common and could amount to failure to make reasonable adjustments:

- ❑ The equipment is not ready and in place when the worker starts the new job, even though the employer knew when he or she recruited the worker of the need to acquire such equipment. Often it is left to the worker to make the arrangements.
- ❑ It takes a considerable time following a request by a worker for the equipment to be supplied. Delays often occur in getting an appropriate assessment or in following up on an assessment and recommendation. The worker often has to make repeated requests.
- ❑ When the equipment eventually arrives, there are delays in getting it installed and further delays in training the worker on its use.
- ❑ All the above delays lead to stress for the worker, which can exacerbate his or her disability and work performance, and lead to tensions or worse in the working relationship.

Williams v J Walter Thompson Group Ltd

Ms Williams, who is blind, was offered a post as computer software operator in the company's worldwide IT department. It was agreed that she would work at home for 3 days / week and that she would use Lotus Notes software, on which she would be trained.

Although the job was offered in June, when Ms Williams started on 1st September, the company still did not have the necessary equipment. Staff had not been trained regarding disability discrimination and no plan of action was in place.

At a meeting between Ms Williams, the company and Access to Work advisers on 29th September, it was agreed she would need a screen reader, a braille display and a speech synthesiser. Following this, Lotus Notes was installed on her home computer. She was told she need not go into work until it was also installed there. In the event, the equipment did not arrive until the end of January 2000 and there were problems installing it. Ms Williams returned to work on 17th February, but despite her frequent requests for work and training, she was given nothing to do until July 2000. She was then asked to work on a Lotus Notes database but it was decided that the cost of a 5-day training course (£4800) was too expensive, even though Access to Work was prepared to pay £3500. Eventually, in October 2001, Ms Williams resigned. She said she had not been

trained on Lotus Notes except for one day in May 2002, 18 months after her employment started. She said she had found her employment “a complete nightmare”.

The employment tribunal found the company had discriminated against Ms Williams and failed to make reasonable adjustments. She had also been constructively unfairly dismissed. She had never received the necessary training or been provided with suitable equipment or work.

The Court of Appeal confirmed that the employment tribunal was entitled to reach that conclusion. The company employed Ms Williams, knowing that she was totally blind and that adjustments would have to be made. Having taken her on in those circumstances, the employer then failed properly to investigate either before or after she started her employment the cost and time that it would take fully to train an unsighted person for the job that she was employed to do.

Training of managers and co-workers

The Disability Discrimination Act suggests not only training the disabled worker, but training anyone else as necessary. The Code of Practice gives as an example, the employer providing training for employees conducting meetings in a way that enables a deaf staff member to participate effectively.

Much discrimination against disabled workers occurs due to lack of awareness of the barriers they face. Training at the outset could make a big difference. Tribunals often suggest that awareness training for managers or co-workers would have been helpful.

Linked to this is the need in some circumstances to ensure the co-operation of co-workers with any adjustments. The Code of Practice discusses this at para 8.22.

Responsiveness to disability in management functions

Recruitment

- Give disability awareness training to staff involved in recruitment.

Writing the job description

- Draft job descriptions clearly and comprehensively, so that disabled job applicants can see for themselves whether they have the capacity to perform a particular role.
- Decide what experience and qualifications you genuinely need for the job. Do not include unnecessary requirements which could exclude people with certain disabilities. This will also help you avoid indirect race and sex discrimination.
- Examples of potentially unnecessary requirements in the job description, person specification or selection criteria could be:
 - ability to drive. This would exclude some workers with visual impairment or epilepsy, for example. Consider whether other modes of transport are possible.
 - certain educational qualifications. This may exclude a worker with dyslexia who is perfectly able to do the job in question.

Advertising and applications

- Consider where to advertise and appropriate wording of advertisement to welcome rather than discourage disabled candidates. Organisations like RNIB and REMPLOY can circulate advertisements amongst disabled jobseekers.
- Have the application package (job description, person specification, background information, application form) available in different formats, eg large font, braille, audio cassette. For some jobs, you could offer completion of a form over the telephone.

Interviews

- Consider offering guaranteed interviews for all disabled candidates who meet the job criteria.

- In your letter inviting candidates to interview, state: “Please let us know if you have any requirements to allow you to participate fully in the interview”.
- Make appropriate adjustments to the interview location and timing as required. Ensure all candidates are suitably greeted at reception and accompanied to the interview room.
- Conduct the interview as appropriate eg:
 - if the candidate is blind, each interviewer should introduce him or herself. The candidate should be guided to a seat.
 - if the candidate has dyslexia, consider replacing any written tests. Ask questions simply and await answers patiently.
 - if the candidate has learning difficulties, allow him or her to be accompanied at the interview.
 - provide a signer or interpreter as necessary, eg for a deaf candidate.
 - allow more time for the interview where necessary.
- Train interviewers on conducting fair interviewing. In particular, train them on what they should and should not ask regarding the candidate’s disability and how to ask about what reasonable adjustments the candidate may need in the job.

Preparing for the worker’s start

- Having taken on a disabled worker, ensure any necessary equipment is in place before his or her start date.
- Do not leave it to the worker to arrange his or her own equipment before he or she starts.
- Ensure other staff are prepared, and not begrudging of any adjustments which may affect them.

Handling of disciplinary and grievance procedures

Workers are entitled to be accompanied by a work colleague or trade union representative at disciplinary or grievance meetings. Where a worker has certain disabilities, eg learning difficulties, the Code of Practice recommends allowing the worker to be accompanied by a friend from outside the workplace.

There have been several cases where the tribunals have expected a flexible approach to the handling of disciplinary or grievance procedures, eg (depending on the nature of the worker's disability):

- Relaxing time-limits for lodging grievances and appeals against disciplinary action.
- Relaxing requirements for the format of grievances, eg not insisting on forms being completed.
- Ensuring the worker fully understands the issues. Providing interpreters / signers as necessary. Allowing a friend or helper outside work to accompany the worker.
- Establishing the worker's preferred mode of communication, eg allowing written submissions before or after the hearing rather than relying on oral representations.
- Flexibility regarding hearing dates. Waiting until the worker is well enough to attend.
- Allowing full preparation time. The worker should be informed well in advance of the hearing date and sent all relevant papers well in advance.
- Not leaving the worker waiting a long time in the waiting room, where this may cause physical discomfort or mental distress.
- Adopting a non-threatening manner and mode of speech.
- Allowing breaks and more time for the hearing.
- If travel is difficult, conducting the hearing by telephone, at home or at another suitable venue.
- Ensuring the worker is not disciplined for conduct which may be reasonably explained by his or her disability, eg a deaf person apparently disobeying a verbal instruction or someone losing their temper when in pain.
- The fact that disciplinary proceedings are pending is not necessarily a reason not to proceed with other reasonable adjustments such as relocation.

Managing disability-related absence

It is wrong to assume that a disabled worker will be absent from work any more than anyone else. However, it is possible in some cases that the worker will need additional time off, either because of illness related to the disability, eg asthma or migraine attacks, or for routine medical checks, eg to have a hearing aid checked with an audiologist.

The DDA and Code of Practice explicitly state that it can be a reasonable adjustment to allow a worker to be absent during working hours for rehabilitation, assessment or treatment. This may be for intermittent days or a longer period, eg for adjustment if someone is newly disabled.

You may have a sickness management policy, whereby workers are monitored, counselled and ultimately dismissed, if they reach certain levels of sickness absence. It is almost certainly discriminatory to include disability-related absences within such a scheme without modification.

Kerrigan v Rover Group Ltd

Mr Kerrigan, a Press Shop Maintenance Fitter, had frequent absences from work due to his chronic asthma. The company operated an attendance improvement scheme which excluded certain serious progressive conditions, but did not exclude asthma. Mr Kerrigan was facing dismissal under the scheme when he was granted total-incapacity early retirement.

The employment tribunal said the company was under a duty to make reasonable adjustments and should have reappraised the exclusions from the scheme in the light of the Disability Discrimination Act.

It will be a reasonable adjustment to disregard a certain level of disability-related absences from such a scheme. There is no legal guideline as to how many absences or what length of time an employer should allow. It is advisable to treat disability-related absences within a separate disability policy and to consider the circumstances of each situation rather than follow rigid rules.

If a worker is off sick and unable to return to work because you have not made certain reasonable adjustments, the tribunal would probably expect you to pay full pay during the sickness absence.

Nottinghamshire County Council v Meikle

Ms Meikle, who has a deteriorating eye condition, worked as a schoolteacher for Nottinghamshire County Council. Her requests for the time-table to be enlarged and to have more non-contact time, so she could prepare written work in daylight hours, were ignored. As a result, she went onto long-term sickness. In accordance with the Council's sick pay policy, her pay was reduced to half after her absence exceeded 100 days.

The employment tribunal said the failure to enlarge the time-table and allow more non-contact time were failures to make reasonable adjustments. The case eventually went to the Court of Appeal, which said the failure to pay full pay during Ms Meikle's leave was unjustified discrimination because the whole reason she was off sick was the failure to make reasonable adjustments to her working conditions.

Good practice for absence management

- Before disciplining or dismissing a worker on sick leave or ending his or her sick pay, first consider whether you have made all necessary reasonable adjustments.
- Omit disability-related absences from the standard sickness absence policy. Have a separate disability leave policy.
- Ensure your staff understand that the meaning of "disability" under the DDA is very wide (see p6), so that they correctly apply the disability leave policy.
- Remember that counting days as sickness absence can have various long-term repercussions, eg in terms of when sick pay runs out, bonuses, redundancy selection criteria and capability dismissal.
- Absences for regular medical checks and replacement of disability aids should not be treated as sickness absences or required to be taken out of annual leave.
- Absence for an operation should not be counted as sick leave or required to be taken out of annual leave.

- It may be a reasonable adjustment to pay full pay to a worker who is absent for disability-related reasons, even if there is no longer a contractual entitlement to full pay, if the worker is absent because reasonable adjustments have not been made to his or her working conditions.
- Adjust annual appraisals and individual targets to take account of any disability leave.
- Adjust team targets to avoid any resentment by colleagues of disability-related absence by one team member.

Norcup v The Commissioners of Inland Revenue

The employers had an attendance-based procedure, where warnings were given if attendance fell below a certain level. There was no adjustment to a unit's targets to take account of operational problems caused by a staff member with above-average sickness absence. Mr Norcup had irritable bowel syndrome, which made his journey to work a nightmare, and led to ill-health absences, for which he was eventually dismissed. Occupational Health had said that Mr Norcup should be able to provide a regular and effective service with the extra provision of additional sickness absence allowance. Personnel failed to act on the suggestion of its welfare officer that Mr Norcup be temporarily transferred to an office near his home.

The tribunal found the failure to transfer Mr Norcup to more convenient offices was a failure to make reasonable adjustment. It also commented: "How can any governmental department expect the Disability Discrimination Act to have its desired effect if it places a person who is disabled in a unit and then makes no adjustment whatsoever to the target of that unit, so that the unit manager views the disabled person as a handicap to the performance of his unit?"

The public sector equality duty

Section 49A of the DDA imposes a disability equality duty (DED) on public authorities. This duty is similar to the race and gender equality duties, although different in some important respects. It came into force on 5th December 2006.

With limited exceptions, it applies to all public authorities, including local authorities, NHS Trusts, government depts., the police, schools and universities.

When carrying out their functions, including the employment function, authorities must have due regard to the need to:

- eliminate discrimination and harassment of disabled people
- promote equality of opportunity
- take steps to take account of disabled persons' disabilities, even where this involves treating disabled people more favourably than others
- promote positive attitudes towards disabled people
- encourage the participation by disabled people in public life.

An example of the practical effect of always considering the impact of new policies on disabled employees is the experience of one public authority which introduced a green travel policy. Employees were penalised if they did not choose 'greener' travel options to travel to and from work. The DED helped the authority to recognise that many disabled workers did not have the same opportunities as their non-disabled colleagues to choose their travel options.

Many public authorities are also subject to specific duties which include publishing a Disability Equality Scheme by 4th December 2006 (except for some schools) and revising the scheme every three years. Disabled people must be involved in all aspects of developing the scheme.

The former Disability Rights Commission published two statutory Codes of Practice on the duty to promote disability equality, one for England and Wales and one for Scotland. The Codes give practical guidance to public authorities on the general and specific duties. These will be taken into account by any court or tribunal where relevant. The Codes can be downloaded from the EHRC website.

Some authorities have been found to focus more on the development of written schemes than on outcomes. This is a trap to be avoided.

Directory of impairments

pages 39 – 100

AGORAPHOBIA

It is estimated that up to 5 million people suffer from agoraphobia, which is the most common of all the phobias.

Agoraphobia is a complex phobia which can manifest itself in several different ways and with greatly varying severity. Most commonly it entails fear of travelling away from a person's "safe" place (usually their home), but it is often linked to fear of being trapped somewhere (similar to claustrophobia). A person with agoraphobia may fear being far from home or leaving home altogether or fear unfamiliar routes and places, wide open spaces, crowded places, confined spaces such as shops, restaurants, trains or lifts, standing in long lines, or being left alone. When in a feared place, he or she will often suffer a panic attack, with severe physical symptoms (palpitations, chest or stomach pain, headache, fast breathing). The person may become anxious even thinking about going to such places and will tend to avoid them.

Is it covered by the DDA?

There are cases where a worker with agoraphobia or claustrophobia has been covered by the DDA. It is a mental impairment which may affect these day-to-day activities in particular:

- Mobility
- Memory or ability to concentrate, learn or understand
- Perception of the risk of physical danger

The worker may be undergoing counselling or taking medication. If this treatment reduces the effect of the agoraphobia, the test is the effect without such treatment.

Agoraphobia is likely to last at least 12 months. Even if the only effects are short-lived panic attacks, these would probably be covered as a recurrent condition. In any event, the anxiety and avoidance over certain situations tends to be an ever-present effect.

Reasonable adjustments

Always consult the worker. Adjustments depend on the severity and nature of the worker's condition. Possibilities are:

- Home-working.
- Ensuring the worker does not need to travel to unfamiliar places or attend other offices or restaurants, or providing a trusted colleague to travel with the worker.
- Providing a suitable workspace, neither too confined, nor open-plan.

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

The National Phobics Society is at www.phobics-society.org.uk Tel: 0870 7700 456

No Panic is at www.nopanic.org.uk Tel: 0808 808 0545 (confidential helpline)

ARTHRITIS

Arthritis is a leading form of disability and affects many people of all ages. The Arthritis Research Campaign says that over 7 million adults in the UK have long-term health problems due to arthritis and related conditions. There are over 200 types of arthritis and rheumatic disease. Arthritis is the second most common cause of time off work.

Arthritis primarily affects areas in and around the joints, eg in hands, knees and hips. By far the most common form is osteoarthritis, a degenerative joint disease. Rheumatoid arthritis is one of the most disabling types, where the joints become inflamed. Lupus is also a serious disorder, which mainly affects young women, particularly those of African Caribbean origin. Gout affects small joints, especially the big toe. Ankylosing spondylitis affects the spine.

Arthritis causes pain, stiffness and inflammation in the joints, which can lead to permanent damage and weakness. Systemic forms of arthritis can damage the whole body. Certain forms of arthritis can cause limb shortening or deformity. Arthritis can cause difficulty standing, walking, sitting, lifting, reaching, making repetitive movements, dressing, taking a bath, gripping things, opening packages, washing hair, brushing teeth, lifting dishes out of the oven, using a scissors, cutting food, lifting a baby etc. Systemic arthritis may be treated by steroids, which can also cause health problems.

Is it covered by the DDA?

There have been tribunal cases brought by workers with arthritis. As always, it is a question of the seriousness of the effects. It is a physical impairment which may affect these day-to-day activities in particular:

- Mobility
- Manual dexterity
- Ability to lift, carry or otherwise move everyday objects

If the worker's pain is controlled by medication, the test is the effect on him or her without the medication.

Arthritis has long-term effects although these may fluctuate. As the effects are recurring, they can be treated as long-term (see p9).

Reasonable adjustments

Always consult the worker. As with other "invisible" conditions, employers and colleagues may not take arthritis seriously. It tends to be associated with older people complaining about small "aches and pains". Appropriate adjustments will

be of the kind suited to conditions such as RSI (p91), Shoulder, Arm or Hand Impairment (p97), Back Impairment (p48) or Mobility Impairment (p87).

Also See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

Useful websites: The Arthritis Research Campaign at www.arc.org.uk and Arthritis Care on www.arthritiscare.org.uk are full of information. See also the National Rheumatoid Arthritis Society at www.rheumatoid.org.uk

Particularly good on workplace accommodations are two American sites: the Arthritis Foundation at www.arthritis.org, and the Job Accommodation Network at www.jan.wvu.edu/media/arth.htm (factsheets on Arthritis).

ASTHMA

Asthma is very common. Approximately 5 million people in the UK have asthma, of whom 3.7 million are adults.

Asthma involves a narrowing of the airways of the lung due to tension or spasm of the muscles in the bronchial walls. It can be triggered by various factors including allergies (eg to animals or house-dust mites), irritants (eg cigarette smoke, chemical fumes, aspirin and other drugs, air fresheners and furniture polish), viral infections (colds or 'flu), exercise, stress or excitement. Poor ventilation, damp and building work can aggravate these factors.

The symptoms, which vary from very mild to very severe, include tightness in the chest, shortness of breath, coughing and wheezing, fatigue and in severe cases, cessation of breathing. An asthma attack can seem to occur very suddenly and symptoms can become progressively worse if untreated. Asthma is usually controlled by minimising contact with triggers and use of medication, normally a short-acting reliever inhaler which can immediately relieve symptoms, and often a long-acting preventer medication (inhaler or tablets).

Asthma UK estimates that each year, 750,000 employees who already have asthma, find things at work trigger their symptoms. This work-related asthma is very commonly triggered by cigarette smoke, but other factors can be latex gloves, paints and dyes, chlorine, dust and cold air.

It is estimated that 3000 people per year develop "occupational asthma". This is triggered in people who did not previously have asthma, by breathing in substances at work. Early diagnosis is important as is it potentially curable. Common causes are wood dust, latex, and flour dust. High-risk occupations include health workers, spray-painters and people working with chemicals or in the baking and flour industry.

Is it covered by the DDA?

There are cases where a worker with asthma has been covered by the DDA. Severe difficulty breathing would affect most day-to-day activities, but most obviously:

- Mobility
- Ability to lift, carry or otherwise move everyday objects
- Memory or ability to concentrate, learn or understand

It can be a substantial adverse effect if an impairment makes an activity more than usually fatiguing, so that a person might not be able to repeat the task over a sustained period of time.

A worker may have asthma attacks only rarely, but this may be because he or she is taking preventative medication. As always, the test is the effect if the worker were not using any medication.

Even if asthma attacks occur only sporadically, the impairment would still be considered long-term as a recurrent condition.

Reasonable adjustments

You should consult the worker about triggers and take steps to avoid these, eg:

- ❑ Provide a clean, smoke-free work environment; non-toxic and unperfumed cleaning products and office supplies.
- ❑ If necessary, relocate the worker away from irritants.
- ❑ The worker should be moved if there are any building or repair works causing dust.
- ❑ If the worker is sensitive to humidity, hot or cold air, these should be controlled by air conditioners, humidifiers, heaters.
- ❑ There should be ready access to fresh air, eg by means of windows which open and additional rest breaks.
- ❑ Exposure to known causes of occupational asthma should be avoided by special equipment, cleaning, supervising and training.
- ❑ If the worker finds movement difficult, consider ground floor working, lifts, accessible parking space, home-working.

Real tribunal cases:

- ❑ In one case, a tribunal said the company should have modified its attendance improvement scheme to take account of the fact that some of a worker's absences were due to a disability, ie asthma.

See also *Kerrigan v Rover Group Ltd* on p34.

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

Asthma UK's website lists symptoms, triggers and treatments on

www.asthma.org.uk

In 2004, it launched "Asthma at Work – Your Charter" in partnership with the Health & Safety Executive, employers and trade unions. This is regularly updated, so is easiest to find by a search. The January 2009 version is at www.asthma.org.uk/health_professionals/ordering_materials/asthma_at_work_your.html and sets out 5 recommendations to employers to reduce asthma in the workplace.

There is a section on occupational asthma on the Health and Safety Executive website at www.hse.gov.uk/asthma

Although an American website, the Job Accommodation Network site at www.jan.wvu.edu/media/Respiratory.html has useful suggestions on its fact sheet about respiratory impairments.

AUTISM OR AUTISTIC SPECTRUM DISORDER

Autism is not a mental illness. It is a developmental disability. Its effects range enormously from mild to severe. A minority of people with autism also have learning difficulties, but others have average or above-average intelligence. Asperger's Syndrome is a form of autism with many similarities, although without learning difficulties.

It is estimated that there are over 500, 000 people in the UK with autism, of whom only 6% of adults are in work. Only 12% of adults with Asperger's Syndrome or high functioning autism are in work.

Autism affects the way people interact with others and process information. People find it hard to think in the abstract, adapt to change, interpret body language and tone of voice, empathise with others and communicate socially.

Is it covered by the DDA?

There are cases where a worker with autism has been covered by the DDA. It is a mental impairment which may affect these day-to-day activities in particular:

- Memory or ability to concentrate, learn or understand
- Speech, hearing or eyesight

If the effects are reduced by any medically prescribed counselling, the effects should be assessed as they would be if the worker was not attending such counselling.

Reasonable adjustments

Suitable adjustments, depending on the individual, could include:

- Communicating in concrete non-ambiguous terms.
- Following up verbal instructions with written instructions.
- Giving clear guidance and explanations for everything; explicitly requesting any necessary action.
- Giving feedback during work.
- Identifying priorities; breaking down tasks into smaller tasks and stages.
- Giving more time to learn new tasks; providing a colleague to work alongside in early stages; clear and structured training.
- Allowing flexible hours if rush hour travel is stressful.
- In interviews, asking specific and closed questions, eg about the worker's experience; avoiding abstract questions; allowing an interpreter in the interview to re-word questions.

An example given by the Code is:

- Providing a structured working day and ensuring other employees cooperate with this arrangement. (Code, 5.22.)

Hewett v Motorola Ltd

Mr Hewett, an engineer, had Asperger's Syndrome. He took out a grievance regarding his appraisal ranking of SI (some improvement) as opposed to ME (meets expectations). He was criticised as being over-sensitive to banter (a manifestation of his disability). Mr Hewett went off sick in June 2002. In July, the employer began disciplinary action against him for his failure to attend work, although it abandoned this after Mr Hewett challenged its appropriateness. When his sick pay entitlement ran out and the company refused to continue it, Mr Hewett resigned.

The tribunal found the company had failed to make reasonable adjustments, eg adjusting his appraisal score to ME, adjusting the way he was questioned during the grievance to reflect the fact that he becomes stressed when he is cross-examined, and continuing to pay sick-pay because his absences were disability-related.

See p14 for general list of adjustments in the DDA and p23 for further suggestions.

Sources of further information

The National Autistic Society is on tel: 0207 833 2299, web: www.nas.org.uk

"The Undiscovered Workforce: information for employers" and "The undiscovered workforce: looking for a job" can be downloaded from the National Autistic Society's website. Links are on page www.nas.org.uk/nas/jsp/polopoly.jsp?d=507&a=5974 or search "The undiscovered workforce" on the site search engine.

It explains the key effects of the disability and is full of useful tips for workplace adjustments.

BACK IMPAIRMENT

A 2005 survey carried out for the Chartered Society of Physiotherapists found 68% of adults had been struck down with back pain at least once in the previous 12 months. A third of those affected experienced five or more episodes over the course of a year. Although back pain is widespread, it is extremely variable in its severity and duration. Whether a worker has a disability under the DDA very much has to be assessed on a case-by-case basis.

Is it covered by the DDA?

There are many cases where a worker with a back condition has been covered by the DDA. It is an impairment which may affect these day-to-day activities in particular:

- Mobility
- Ability to lift, carry or move everyday objects

If the worker is taking painkillers or undergoing other medical treatment which lessens the effect, the test is the effect without the treatment.

Back conditions will be covered if they have substantial adverse effects which have lasted or will last for at least 12 months or are recurring.

Reasonable adjustments

The Health & Safety Executive says on its website “tackling back pain needs good management and a partnership approach”. Always ask the worker. Adjustments, depending on the nature and degree of disability, may include:

- Training on proper lifting techniques.
- Providing assistance with lifting or mechanised lifting.
- Putting the worker on light duties only.
- Providing an ergonomic chair and workplace design.
- (If the worker needs to stand for prolonged periods) providing an anti-fatigue mat and stools to lean against.
- Providing an automatic stapler.
- Providing trolleys to move files.
- Locating frequently used supplies and tools at waist height.
- Installing doors which open automatically.
- Taking steps to reduce the worker’s physical exertion.
- Providing mobility aids if long-distance walking is necessary.
- Accessible parking.
- Nearby toilets.
- Providing an occupational physiotherapy service.

An example given by the Code is:

- Reallocating lifting duties to colleagues. (Code, 8.13)

Where the back is damaged by repeated movements, see also RSI (p91).

Real tribunal cases:

Tribunals have made these suggestions:

- Reallocating a deputy ward sister's manual duties to other workers.
- Allowing a school dinner lady to undertake fixed duties which she could manage, rather than share a rota for a variety of duties.

See p14 for general list of adjustments in the DDA and p23 for further suggestions.

Sources of further information

The Health & Safety Executive has a brief section on musculoskeletal disorders including back pain on its website: www.hse.gov.uk

Although an American website, the Job Accommodation Network site at www.jan.wvu.edu/media/Back.html has useful suggestions on its fact sheet about back impairments.

CANCER

Is it covered by the DDA?

Although many people get discriminated against because they have or have had cancer, in the past it has been difficult to fit many instances of cancer within the artificial definition of disability in the DDA. In recognition of this, since 5th December 2005 cancer has been deemed a disability as soon as it is diagnosed.

Reasonable adjustments

Always ask the individual, but the most likely adjustments to be required would be those to alleviate stress and fatigue or weakness, eg:

- Allowing flexi-time, altered or reduced hours.
- Allowing increased rest periods and a self-paced workload.
- Reducing stress factors.
- Arranging the workplace so less physical exertion is necessary
- Enabling the worker to control the temperature of his or her workplace.

Other adjustments will depend on the nature of the individual's illness and treatment. For example, if the worker has respiratory difficulties, see ideas for Asthma (p43).

For further ideas, see the general adjustments suggested in the DDA on p14 and other suggestions at p23. suggestions.

Sources of further information

There is a cancer fact sheet on the American website, the Job Accommodation Network at www.jan.wvu.edu/media/canc.htm

A guidance report, "Cancer and working: guidelines for employers, HR and line managers" produced jointly by Cancerbackup, the CIPD, and the Working with Cancer group, is available on the CIPD website via a link at www.cipd.co.uk/subjects/health/general/_cncrwrkg.htm

CEREBRAL PALSY

Cerebral palsy is not an illness. It is a physical impairment, usually caused by failure of part of the brain to develop before birth or in early childhood. The main effect is difficulty in movement, which may affect hands, arms, legs or feet, and sometimes face and tongue muscles, causing grimacing and drooling. Muscles may be stiff, weak or shaky. There are different types of cerebral palsy and the level of disability can vary enormously. Some people may simply move a little awkwardly. Others may be unable to walk at all. As well as difficulty maintaining balance or walking, the effects can include poor coordination; abnormal movements; loss of control of posture; difficulty eating; incontinence; difficulty with fine motor tasks, eg writing, using a scissors, turning pages or doing up buttons; speech difficulties.

Sometimes other parts of the brain are also affected, causing difficulties with sight, hearing, touch and concentration. About 10% of adults also have epilepsy. Mental abilities are not necessarily impaired at all, but a proportion of people will have moderate or severe learning difficulties.

Is it covered by the DDA?

A person with cerebral palsy is very likely to be covered by the DDA. Potentially all the day-to-day activities listed in the DDA could be affected. Although the effect may not always be substantial, it is important to remember that someone with mild cerebral palsy may experience minor effects in a number of respects, which taken together could have an overall substantial effect on his or her ability to carry out day-to-day activities.

Reasonable adjustments

Always consult the worker. Suitable reasonable adjustments will vary but could include some of those suitable to people with MS (p89), Visual impairment (p98), Hearing impairment (p67), RSI (p91) or Learning difficulties (p76), Mobility (p87).

See also the general adjustments suggested in the DDA (p14) and other suggestions on p23.

An employer may be under a duty to make physical arrangements for the worker to go to the toilet or to accommodate an external carer to help the worker do so. However, this does not go as far as a duty actually to provide the carers to attend to a worker's personal needs.

Sources of further information

Useful websites are Scope on www.scope.org.uk, the National Institute of Neurological Disorders and Stroke (cerebral palsy section) on www.ninds.nih.gov, and the cerebral palsy fact sheet on the Job Accommodation Network site at www.jan.wvu.edu/media/cere.htm

DEPRESSION

Depression is a very common mental health problem. Although everyone feels sad or fed up on occasions, for some people depression can be an illness interfering with their ability to live a normal life. It is estimated that 7 – 12% of men and 20 – 25% of women experience diagnosable depression at some point in their lives. GPs often write “stress” on a sicknote to avoid stigma, when they are in fact treating depression.

The World Health Organisation’s International Classification of Diseases (WHO ICD) says the most typical symptoms of depression are depressed mood, loss of interest and enjoyment, and reduced energy leading to increased fatigability and diminished activity. Marked tiredness after only slight effort is common. Other common symptoms are reduced concentration and attention, disturbed sleep, diminished appetite, reduced self-confidence, ideas of guilt and unworthiness, bleak views of the future and ideas of self-harm.

Depression is often triggered by traumatic life events which are unrelated to the workplace situation. However depression, anxiety and related mental health problems can also be caused or exacerbated by problems at work, eg unrealistic workloads, too high expectations, long hours and bullying. The Health and Safety Executive (HSE) says stress at work is a serious problem. It defines stress as the adverse reaction people have to excessive pressure or other types of demand placed on them. The HSE has commissioned research which indicates that up to 5 million people in the UK feel “very stressed” by their work, with about half a million experiencing work-related stress at a level they believe is making them ill.

Unfortunately, research by the TUC indicates that people with mental health problems face the worst discrimination and few employers have policies on this.

See also Mental Health Issues on p82 for specific conditions.

Is it covered by the DDA?

There are many cases where a worker with depression has been covered by the DDA. Depression can affect virtually all of the day-to-day activities because of the overriding effect of extreme tiredness. These day-to-day activities are particularly likely to be affected:

- Memory or ability to concentrate, learn or understand
- Mobility
- Perception of the risk of physical danger

Where depression is controlled by medication or medically prescribed counselling, the effect must be assessed as it would be without medication or counselling.

Depression, especially when it is a reaction to a particular event, may not last 12 months. On the other hand, a worker may have recurring bouts of the same depression, which occur more than 12 months after the original depression. If so, the condition would be covered as having a fluctuating effect.

Reasonable adjustments

Always consult the worker. Particular patience and sensitivity may be needed where a worker is depressed. Appropriate adjustments depend on each individual and the nature of their difficulties. The following are some suggestions.

- ❑ Do not ignore symptoms of stress or depression.
- ❑ Allow shorter, adjusted or flexible hours.
- ❑ Allow longer or more frequent breaks.
- ❑ Allow full or partial home-working.
- ❑ Allow time off for counselling and personal telephone calls at work for support.
- ❑ Allow the worker to listen to soothing music, through headphones if necessary.
- ❑ Ensure natural light in the workspace.
- ❑ To help with concentration: reduce distractions and interruptions; provide a private office or workspace; break large tasks down into small stages.
- ❑ Allow meetings to be recorded or provide written notes/minutes afterwards.
- ❑ If the worker is off sick, do not pressurise him or her by setting deadlines for return.
- ❑ Agree a staged return to work in terms of hours, days and workload.
- ❑ Ensure the worker is welcomed by colleagues and managers on his or her return; train supervisors to provide a positive response; take steps to ensure the worker is not isolated or bullied by colleagues, as can often happen.
- ❑ Ensure the worker returns to a clean in-tray.
- ❑ On the worker's return, review his or her physical environment; brief the worker on both social and work developments; plan workload and support; discuss possible adjustments.
- ❑ Deal with any underlying cause of stress, eg bullying, excess workload or difficult customers.
- ❑ Provide ongoing positive support.
- ❑ Depression is often triggered by disciplinary proceedings. If it is necessary to take action while a worker is depressed, handle the proceedings with sensitivity and flexibility. Give good notice of hearing dates; allow a companion of choice; give full detail of the allegations and support documents well in advance of the hearing. For more detail of handling disciplinaries and grievances with a depressed worker, see pp32 - 33.

The Code suggests:

- ❑ Allowing private telephone calls during the day to a support worker.
(Code, 5.12)

- It may be a breach of the duty to make reasonable adjustments to fail to ask a worker why he or she keeps crying at work and to discipline the worker without giving him or her the chance to explain the problem arises from depression. (Code, 5.12)

Real tribunal cases:

Tribunals have made these suggestions:

- Altering working hours.
- Where the worker was absent for a while, allowing a phased return to work.
- Where the depression was caused by the worker's relationship with her line manager or by the type of work she was doing, redeployment or providing a mediator to intercede.
- Allowing a grievance to be lodged outside the time-limit set in the employer's grievance procedure.
- Where the worker was facing disciplinary action in relation to any matter, allowing additional time to prepare, being flexible over dates, postponing the hearing until the worker is fit to attend, allowing an appeal to be lodged outside the time-limit in the disciplinary procedure.

Cosgrove v Caesar & Howie

Ms Cosgrove was a legal secretary from 1973 – 1999. She was absent from work due to depression from 2 December 1997 and did not return. After one year's absence, she was given 12 weeks' notice of dismissal. The tribunal rejected her discrimination claim. It was influenced by the fact that neither Ms Cosgrove nor her doctor were able to suggest any possible reasonable adjustment.

The EAT overturned the decision and said the firm had failed to make reasonable adjustments. The firm had given no thought to reasonable adjustments whatsoever, and it was therefore irrelevant that neither the worker nor her GP could make suggestions. The EAT could think of several possibilities, eg transferring her to another office, altering her working hours, arranging a gradual return to work. Although none of these adjustments would definitely have worked, there was no assurance that they would not have worked either, and the employer should therefore have considered them.

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

MIND has a useful website at www.mind.org.uk There is an excellent publication from Mind Out for Mental Health: “The Line Managers’ Resource – a practical guide to managing and supporting mental health in the workplace” available at www.mindfulemployer.net/Line%20Managers%20Resource.pdf

There is a fact sheet on Depression as well as on different depressive disorders on the informative website of the Mental Health Foundation, www.mentalhealth.org.uk Shift (a five year, Department of Health-funded initiative to tackle stigma and discrimination surrounding mental health issues in England) Shift has published the “Line Managers’ Resource” - a booklet and website that gives advice and information for managing and supporting people with mental health problems in the workplace. It also gives advice and information for workers to help them assess their own needs and plan for meetings with their manager. Available at <http://shift.org.uk/employers>

The Health and Safety Executive has published Management Standards regarding stress, which are a useful measure for assessment and support. These are available on its website at www.hse.gov.uk/stress/index.htm There is a companion ACAS booklet “Stress at Work” available at www.acas.org.uk/index.aspx?articleid=782

See also section on Mental Health Issues (p82).

DIABETES

Diabetes UK estimates that 1.8 million people in the UK have diabetes and probably another million have it without realising.

Diabetes mellitus is a condition when the amount of glucose (sugar) in the blood is too high because the body cannot use it properly. Insulin is the hormone which helps glucose correctly enter the cells of the body. There are two main types of diabetes. Type 1 (also known as insulin dependent diabetes) occurs when the body is unable to produce any insulin, and usually appears before the age of 40. Type 2 (non-insulin dependent diabetes) occurs where the body cannot make enough insulin or use it properly. Type 2 tends to develop over the age of 40 and its symptoms are usually less severe.

Diabetes may be controlled by insulin tablets or by diet alone. Type 2 may not need insulin injections or tablets. Without treatment, people with diabetes may well feel tired all the time and need constantly to pass urine. This is caused by their high levels of blood glucose (technically known as “hyperglycaemia”).

Hypoglycaemia means blood sugar levels which are too low. In diabetes, it is caused by the insulin (usually) or tablet treatment. Triggers can be taking too much insulin, missing a meal, vigorous exercise or other factors. People usually get warning symptoms before having a hypoglycaemic attack (or “hypo”). The early effects are normally hunger, feeling shaky and starting to sweat. Unless immediately treated with food or glucose tablets, blood sugar will fall further, and the person may feel weak and dizzy, become uncoordinated and get blurred vision. Some people may become aggressive. These symptoms can resemble those of someone who is drunk. If no action is taken, the person will lose consciousness and can go into a coma. Unfortunately some people do not experience good warnings of a hypo and can suddenly lose consciousness.

Research suggests that two thirds of people have no severe hypos at work in any one year. Of the one third who do, the impact on the workplace is marginal, entailing minimal time off. (See feature “Hypos in the Workplace” on Diabetes UK website.) Yet people are regularly dismissed purely because of assumptions that there is a safety risk.

People with diabetes are also more prone to viruses and infections and these may take longer to clear, as well as make the diabetes harder to manage during that period. Absences for apparently neutral reasons, therefore, may be disability-related. There are also various complications, such as eye disease, or foot or leg ulcers.

Is it covered by the DDA?

There have been many cases where a worker with diabetes has been covered by the DDA. Indeed, it is hard to see how diabetes which requires treatment by insulin injections or tablets could not be covered by the legal definition of disability. Virtually every one of the listed day-to-day activities would be affected.

Reasonable adjustments

Always ask the worker. A few jobs are barred to people on insulin and some others may be dangerous to someone with a history of severe hypos. In general, however, a person should be perfectly able to work normally if appropriate adjustments are made. Depending on the individual, these are some suggestions.

- Allow food and drink at the workstation, to help regulate blood sugar.
- Allow the worker time away from his or her desk to test sugar levels or make an injection.
- Timing between insulin injections and food ingestion can be crucial. Therefore you should give the worker flexibility as well as reliable breaks.
- Provide a suitable location for blood testing and injecting, and somewhere to dispose of lances and needles.
- Avoid variable shifts, particularly overnight, as these disrupt timing of meals and injections and provide irregular stress levels.
- Make an allowance regarding the worker's sickness absence, including for general viruses and infections.

Adjustments may also be necessary for related impairments, eg Visual impairment (see p98), Heart impairment (see p70), neuropathy / nerve damage (see RSI, p91).

Real tribunal cases:

Tribunals have made these suggestions:

- Ensuring an estate agent had a fixed lunch break of at least half an hour, even though other staff had to be flexible over when they took their breaks because of the busyness of the office.
- Giving facilities for blood testing and injecting away from the worker's desk; allowing breaks to do so.

British Telecommunications PLC v Pousson

Mr Pousson, who is diabetic, was employed as a customer services adviser, answering telephone calls from the public. Although management knew he had to test his blood and inject himself with insulin, they did not ask how, when or where he undertook these matters. No suitable location was offered for testing and injecting and no facilities for disposing of needles. No risk assessment was carried out. Mr Pousson was not allowed to exceed his break times and had to meet minimum log-on times. As a result of pressure not to leave his desk to test and inject himself and reluctance to do so publicly at his desk, he eventually stopped testing altogether. This caused a hypoglycaemic episode leading to a severe injury, after which Mr Pousson left.

Mr Pousson had also been warned under the attendance policy, which had not been modified in his case, despite the recommendation of occupational health that an allowance regarding sickness absence should be made. Two occupational health doctors had advised that diabetes can make a person more prone to general viruses and infections, and these can take longer to clear up.

The employment tribunal found Mr Pousson had been discriminated against when disciplinary action was taken against him for poor attendance and also in being spoken to about absences away from his desk. His absences from work or from his desk were for disability-related reasons. Moreover, the company had failed to make a number of reasonable adjustments, in particular in relation to offering facilities for testing and injecting. The key failure was the “quite inexplicable” failure to give adequate guidance or training to line managers and to have the occupational health reports assessed by someone with suitable training and knowledge of managing persons with disabilities.

The Employment Appeal Tribunal upheld the tribunal’s judgment.

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

Diabetes UK has a good website at www.diabetes.org.uk Also informative is a website run by the West Suffolk Hospitals NHS Trust: DiabetesSuffolk.com at www.diabetessuffolk.com Although an American website, the Job Accommodation Network site at www.jan.wvu.edu/media/Diabetes.html has useful suggestions on its diabetes fact sheet.

DISFIGUREMENT

The charity Changing Faces estimates that over 1 million people in the UK have a disfigurement to the face, hands or body from many different causes. One in 111 people have a significant disfigurement to their face from birth, scars from accidents, cancer surgery, skin conditions and facial paralysis, eg caused by stroke, cleft lip and palate, to name just a few. Changing Faces notes that the severity of a disfigurement does not correlate with the amount of distress experienced by the person with it - what may appear minor to others can still affect self-esteem and confidence. Disfigurements hidden by clothing can also lead to lack of self-esteem and cause emotional distress. Just the simple act of using public transport to get to work can be a daunting and awful experience due to staring, comments and sometimes even outright rudeness.

Unfortunately, a public attitude survey conducted in 2008 suggests that 9 out of 10 people have unconscious (or conscious) negative attitudes towards people with disfigurement. This can translate into considerable disadvantage at work.

Is it covered by the DDA?

Disfigurement include scars, birthmarks, limb or postural disfigurement (including restricted bodily development) and skin diseases. Severe disfigurement is treated as having substantial adverse effect on a person's ability to carry out day-to-day activities. Whether the disfigurement is 'severe' is a matter of degree and it may be relevant to take account of where the disfigurement is, eg on the back as opposed to on the face, but depending on the nature of the job. If severe disfigurement lasts or is likely to last at least 12 months, it will be considered a disability.

Tattoos and decorative body piercings are explicitly excluded from the definition of disability.

Reasonable adjustments

The most important adjustment is for employers to ensure that disfigurement is considered and included in all relevant policies and to change the culture of the workplace to ensure there is no harassment or teasing and that workplace decisions, eg as to recruitment, promotion, client assignments, are not consciously or unconsciously based on physical appearance. In some cases, flexibility regarding dress codes will be appropriate if requested by workers. But there is a fine line between allowing a self-conscious employee to dress in a way he or she feels comfortable or, for example, avoid public speaking, and imposing such requirements on him or her. Supervisors and managers might like to think

about what support they can offer to enable the employee with a disfigurement to gain confidence and should discuss with the employee how best this might be achieved. For example a swimming instructor with a disfigurement on their back may need reasonable adjustments such as awareness training for colleagues, whilst someone with a facial disfigurement in a customer facing role may need a strategy in place if a customer refuses to be served by them as a reasonable adjustment. Also consider asking Changing Faces for support, who will work with both the manager and the employee to develop appropriate support, coping strategies and reasonable adjustments.

Sources of further information

Changing Faces has a useful website at www.changingfaces.org.uk and should be a good source of advice, alternatively you can contact Changing Faces directly for support and advice on 0845 4500 275.

DYSLEXIA

The British Dyslexia Association says around 4% of the population is severely dyslexic and a further 6% have mild to moderate dyslexia. This means up to 2.9 million workers may be affected.

There is no universally accepted definition of dyslexia, although it is a widely recognised condition, which is included in the World Health Organisation's International Classification of Diseases. Essentially, it is a neurological condition which affects the way the brain processes information and causes specific difficulty in writing, reading and spelling. Numeracy, verbal and listening skills, organisational and other non-verbal skills may be affected. The worker may have difficulties with, for example, sustained concentration, organising activities, expressing ideas clearly, presenting thoughts succinctly, keeping track of appointments, reading maps, remembering phone numbers, completing forms, finding his or her way around a strange place, remembering where things have been put, reading time-tables, reading recipes, writing letters or cheques, remembering messages.

It is possible that the worker will have been diagnosed as dyslexic while at school and may have been statemented at that time, ie received a statement of Special Educational Needs.

Is it covered by the DDA?

Some workers report that their employers do not believe there is any real difficulty when they say they have dyslexia. However, the legal Guidance says severe dyslexia would clearly be covered by the definition of "disability" and there have been several cases where a worker with dyslexia has been covered. It is a mental impairment which may affect these day-to-day activities in particular:

- Memory or ability to concentrate, learn or understand
- Speech, hearing or eyesight

Reasonable adjustments

Discuss options with the worker. Depending on the nature and severity of his or her dyslexia, there are numerous adjustments which could be made including:

- Provision of assistance.
- Using clear typefaces and pastel or matt paper for documents and application forms.
- Sending application forms on e-mail or disc.
- Allowing the worker time to read and complete tasks.
- Providing dictionaries and electronic spell-checks, or colleagues to proof-read documents.

- ❑ Giving verbal or written instructions according to which is easiest.
- ❑ Using voice-mail rather than written memos.
- ❑ Communicating verbal instructions slowly and in a quiet location.
- ❑ Recording important instructions on tape.
- ❑ Offering help with prioritisation of tasks.
- ❑ Providing a quiet work environment without distractions.
- ❑ Providing appropriate technology, eg a computer with pastel background to the screen.
- ❑ Providing support software including voice-activated software, hand-held tape recorder, digital camera, portable writing aids, scanning pen; talking calculator.
- ❑ Allowing the worker to be accompanied to meetings and/or providing notes of the content in advance and minutes afterwards.

The Code gives these examples:

- ❑ Allowing more time for written tests. (Code, 5.3)
- ❑ Rather than handing out policy documents by way of induction, talking them through with the worker. (Code, 8.7)
- ❑ Not requiring written qualifications for a post, when general ability can be measured in a different way. (Code, 7.10)

Some adjustments relevant to Visual Impairment (p98) may be helpful.

Real tribunal cases:

Tribunals have made these suggestions:

- ❑ Notifying interview questions in advance in the waiting room.
- ❑ Providing written feedback on the reasons for a worker's lack of success on a job application.
- ❑ Supply of voice recognition software, by a large company which had purchased an expensive computer system.
- ❑ Speaking directly to the worker's disabilities adviser at the job centre.

Sylvia's case

Sylvia, a dyslexic worker who unsuccessfully applied for a post in a nursery school, took up the school's standard offer of oral feedback to unsuccessful candidates. She asked for written feedback or, if this was not possible, to be permitted to bring someone with her, to ensure she remembered and absorbed the verbal feedback. The school refused on the basis that this was not their policy and not offered to any other candidate. The tribunal found this refusal to be a failure to make reasonable adjustments. It said:

"This illustrates with crystal clarity the need for the school to have taken advice as to how to deal with the case of a dyslexic applicant. There were perfectly easy ways in which this feedback interview could have been conducted, and to say simply "it is not our policy to do it that way; because we do not do it with anybody else" is not an answer. The whole essence of reasonable adjustment is that you

do something in a different way from your normal standard policy in order to overcome a disadvantage to a certain persons, which would otherwise be suffered.”

Regarding the school’s requirement for a written test as part of the procedure, the tribunal said:

“The Respondents were running a substantial risk in requiring a known dyslexic applicant to undergo the same written application procedure and to produce the same kind of written work as all other candidates, without even considering whether some reasonable adjustments might have been called for.”

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

The British Dyslexia Association, tel: 0118 966 8271, web: www.bda-dyslexia.org.uk

The website includes a description of the effects of dyslexia plus a guide for employers including a detailed list of possible adjustments and descriptions of available technology.

An American site, Dyslexia Adults Link at www.dyslexia-adults.com has many ideas for reasonable accommodation on its “in the workplace” page.

For a related condition, see the website of the Dyspraxia Foundation: www.dyspraxiafoundation.org.uk

Ability Net is a charity providing free information and advice on computer technology for people with disabilities. Tel: 0800 269 545 and website: www.abilitynet.org.uk

EPILEPSY

According to the British Epilepsy Association, one in 130 people in the UK has epilepsy – around 420,000 people altogether. There are many myths, fears and misconceptions about its effects. In general, one would expect the law to accept that epilepsy fell within the definition of disability under the DDA. However, experience suggests that employers may require a worker to prove that his or her particular condition falls within the DDA.

There are many different types of seizure and individuals are affected very differently. Most people are familiar with “tonic-clonic” (“grand mal”) seizures, where the person loses consciousness, falls to the ground, and has jerking movements for a couple of minutes. However, other forms of seizure can have quite different symptoms, eg “atonic” (sudden loss of muscle tone causing the person to fall), “myoclonic” (brief forceful jerks, which may not lead to the person falling) or “simple partial”, where the person remains conscious but suffers disturbances to hearing, vision, smell or taste, or other symptoms which are often not apparent to onlookers. In some people, seizures may only occur at night. Under the law, people with any form of epilepsy may well be disqualified from driving on a temporary or permanent basis.

Is it covered by the DDA?

One would expect epilepsy to meet the definition of “disability” and there have been many cases where workers with epilepsy have been covered by the DDA.

Anti-epileptic medication may reduce a person’s seizures significantly or remove them altogether. In such a case, the effects on a person if he or she were not taking the medication should be assessed.

Reasonable adjustments

As always, adjustments depend on the nature and severity of the disability and the worker should be consulted. You need to provide safeguards against certain dangers for those whose seizures are uncontrolled, eg:

- ❑ Guards on machinery.
- ❑ Protection for working at heights.
- ❑ Chairs with arm rests and no casters.
- ❑ Rubber mats on the floor.
- ❑ Ensuring the worker does not work alone at isolated sites.

If the worker has photo-sensitivity:

- ❑ Avoid fluorescent lights.
- ❑ Provide an anti-glare guard on the computer and a flicker-free monitor.

Where medication causes sleepiness or difficulty in waking in the mornings, consider adjusting hours and allowing breaks.

Certain jobs are subject to special rules or restrictions on the employment of people with epilepsy, eg train, ambulance and taxi drivers; nurses; teachers (of certain subjects).

Real tribunal cases:

Tribunals have made these suggestions:

- Allowing later shifts or more flexible hours where the worker finds it difficult to get up in the morning.
- Avoiding rotating shifts where disruption to the worker's sleeping patterns would have adverse effect.

Warner v Sunseeker International (Boats) Ltd

Mr Warner worked as a carpenter. He is an epileptic, whose fits are controlled by medication. Side-effects are day-time sleepiness and problems getting up in the morning. He was dismissed mainly for his time-keeping.

The tribunal found the employer had failed to make reasonable adjustments, eg allowing greater flexibility with his hours or later shifts.

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

British Epilepsy Association on www.epilepsy.org.uk

The site includes a detailed explanation of many different forms of seizure; the rules regarding driving; a list of occupations where there are statutory restrictions on employing people with epilepsy.

Ability Net is a charity providing free information and advice on computer technology for people with disabilities, including those with photo-sensitive epilepsy. Tel: 0800 269 545 and website: www.abilitynet.org.uk

Although an American website, the Job Accommodation Network site at www.jan.wvu.edu/media/Epilepsy.html has useful suggestions on its epilepsy fact sheet.

HEARING IMPAIRMENT

The RNID estimates that there are about 3.5 million people of working age who are deaf or hard of hearing, of whom 160,000 are severely or profoundly deaf. There are four levels of deafness, measured by the level of decibels which can be heard by a person's better ear: mild, moderate, severe and profound. People with moderate deafness will probably need a hearing aid and those with severe or profound deafness will usually rely on lip reading or sign language. Tinnitus is a buzzing, ringing or other noise heard in the ear or head. It can be temporary or permanent and vary in its severity.

The term "prelingually deaf" is used for those who were born deaf or lost their hearing in early childhood, before they acquired language. People who are prelingually deaf are the most likely to use sign language. BSL (British Sign Language) is the preferred language of approximately 50,000 people in the UK, but deaf people from different countries will have their own sign language. Other deaf people may use Sign Supported English or may not be able to sign at all.

The Labour Force Survey in 2001 showed that only 68.1% of people of working age who had difficulty in hearing were in employment compared with 81.2% of people who were not deaf, hard of hearing or otherwise disabled.

Is it covered by the DDA?

A worker with a hearing impairment may be covered by the DDA, depending on its severity when measured without the use of any hearing aid. For example, a worker is likely to be covered if he or she is unable to hold a conversation with someone talking in a normal voice in a quiet or moderately noisy environment, as opposed to in a very noisy place. It would also be a substantial effect if the worker cannot hear and understand another person speaking clearly on the telephone.

The most obviously affected activities are:

- Speech, hearing or eyesight
- Ability to learn, concentrate or understand

Reasonable adjustments

Always ask the worker. These are some suggestions, depending on the worker's level of deafness, whether he or she uses BSL, and his or her level of English.

- Provide an interpreter / signer (BSL interpreters need to be booked well ahead).

- ❑ In meetings or training, ensure the worker and interpreter are appropriately positioned. Allow breaks for interpreters.
- ❑ For shorter or less important messages, communicate through written notes or e-mail.
- ❑ In meetings, provide a speech to text operator (the operator types into a computer; the deaf person reads off the screen).
- ❑ Provide speech recognition software (the software is trained to recognise the speaker's voice and turn words into computer text).
- ❑ For lip-reading in meetings, ensure good lighting and positioning of speakers where they can easily be seen (a round table is best).
- ❑ Apply good practice principles also to disciplinary meetings.
- ❑ Provide assistive listening devices, eg an induction loop or infra red system, in the office and training or meeting rooms.
- ❑ Provide portable induction loops for training outside the office.
- ❑ Install good lighting in the office and meeting rooms (deaf people rely on visual clues).
- ❑ Ensure good acoustics in the office; reduce background noise from machinery, traffic or other people and use thick carpeting.
- ❑ Position the worker in the office where he or she can see colleagues, is not in an isolated position, and does not have his or her back to the door.
- ❑ Allow more time for communication, meetings and tests.
- ❑ Give information in advance of meetings, training or induction. Provide minutes afterwards.
- ❑ Telephone: provide amplification through the telephone; text phones; register with Tynetalk (a telephone relay service run by the RNID and funded by BT (for info, call 0800 500 888 (text) or 0800 7311 888 (voice))).
- ❑ Make sure you use plain English.
- ❑ Provide deaf awareness training to the worker's colleagues and tutors of training courses.
- ❑ Consider offering basic sign language training for any colleagues who are interested.
- ❑ Explain fire procedures to the worker; train the fire officer on considerations relevant to disability; provide a visual alarm or vibrating pager.

The Code gives these examples:

- ❑ Avoiding hard flooring as it is noisy. (Code, 5.9)
- ❑ An adapted telephone (see above for details). (Code, 5.18)
- ❑ Sub-titles on training videos. (Code, 8.8)
- ❑ When interviewing a worker who can lip-read, the interviewer should sit facing the worker in good light, speak clearly and repeat questions if necessary. If the worker uses BSL, arrange an interpreter and more time for the interview. (Code, 7.22)
- ❑ Training employees on conducting meetings in a way which enables the worker to participate effectively. (Code, 5.18)

real tribunal cases

Wynn v Multipulse Electronics Ltd

Mr Wynn, who is profoundly deaf, applied for a job as 'wire person'. He was offered an interview but it had to be cancelled as the company had not arranged for a sign language interpreter. The company said the interview would be rearranged but Mr Wynn heard nothing further. Eventually he received a letter saying that the company could not, for health and safety reasons, employ a person who requires a sign language interpreter to communicate.

Mr Wynn brought a tribunal case for disability discrimination. The company admitted that Mr Wynn's skills and abilities were sufficient, but said that it did not have enough resources to employ Mr Wynn. However, it had not made any enquiries about funding from Access to Work.

The tribunal found direct discrimination and failure to make reasonable adjustments. The company had made no assessment of Mr Wynn or of the work environment and had not consulted Mr Wynn over what adjustments would be needed. In fact the adjustments could have been made free of charge under the Access to Work scheme. The tribunal awarded loss of earnings plus £7500 for injury to feelings. It said:

'All of the respondent's actions were predicated on ignorant, erroneous, stereotypical assumptions of the claimant's abilities.'

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

The RNID has an excellent website at www.rnid.org.uk. It has a very practical "Don't Panic Pack" for employers. . It is available at

www.rnid.org.uk/VirtualContent/85015/panic_pack.pdf

Although an American site, the Job Accommodation Network at

www.jan.wvu.edu/media/Hearing.html has a detailed and useful factsheet.

HEART IMPAIRMENT

There are many different types of heart condition and the symptoms will vary in each. The British Heart Foundation says almost 1 in 8 people have been diagnosed with a disease of the heart or circulatory system.

Is it covered by the DDA?

There are cases where a person with a heart impairment has been covered by the DDA. The most obviously affected activities are:

- Mobility
- Ability to lift, carry or otherwise move everyday objects

A worker will usually be on preventative as well as symptom-relieving medication. The test is the effect on the worker were he or she not taking the medication.

Reasonable adjustments

Always consult the worker, but these may include reducing stress, physical exertion or tiredness and could be similar in some respects to those appropriate to someone suffering from fatigue, breathing difficulties, mobility or lifting difficulties. For ideas, see suggestions at pages 43 (Asthma), 48 (Back) and 00 (ME).

Real tribunal cases

William's case

William worked as a psychiatric nurse for many years in a medium secure psychiatric unit. In 1995, at the age of 45, he had a heart attack. He recovered and continued to work on the "annex" in his usual way except that he was exempted from control and restraint procedures. In fact, control and restraint procedures were far more prevalent in the acute unit, whereas the focus in the annex was on rehabilitation.

A new ward manager took over in May 2000 and decided that all staff should be rotated between the annex and the acute unit to prevent staff becoming stale. William explained his heart condition and that he found working on the annex less highly charged and stressful due to the lower likelihood of violent incidents. In response, William was suspended with effect from 4th July and referred to occupational health. Two weeks later, William suffered a further heart attack.

In November 2000, occupational health reported that William was making an excellent recovery and should be able to return to modified duties in the near future. In December 2000, the occupational health doctor suggested a 4-way meeting with William, Human Resources, a management representative and himself to discuss reasonable adjustments and the nature of any control and restraint incident which might occur. This meeting never took place because the management team had already decided William could not return to work if he did not participate in the staff rotation which included working on the acute unit. William was eventually dismissed in March 2001.

The tribunal described the management view as “dogmatic and inflexible” and indicating a “deplorable attitude”. The tribunal said the risk of William becoming involved in any control and restraint incident while working in the annex was minimal and the employer had not carried out any proper risk assessment on this. Also, “the failure to give proper and serious consideration to non-nursing roles, either on a temporary or a more long-term basis appeared to the tribunal to be wholly unreasonable.”

“If they had carried out a risk assessment in an open-minded and proper way, the tribunal is satisfied that any reasonable employer would have come to the conclusion that allowing William to work on the annex and exempting him from control and restraint procedures was practicable ... and the risk was so low as to be negligible.” The reason no 4-way meeting took place and no proper risk assessment was undertaken was because the managers wished to resist an outcome which was contrary to its policy of rotation of all staff. The employer therefore discriminated against William and failed to make reasonable adjustments.

See also general list of adjustments in DDA (p14) and further suggestions at p23.

Sources of further information

There are specific suggestions regarding reasonable adjustments in the “Heart conditions” factsheet on the American website, Job Accommodation Network at www.jan.wvu.edu/media/Heart.html

HIV / AIDS

It is estimated that 53,000 adults were living with HIV in the UK at the end of 2003. Of these, over 25% were unaware of their infection. Since 1999, heterosexually acquired HIV has led to a steep increase in the number of HIV diagnoses.

HIV attacks the body's immune system, making it hard for people to fight off infections and exposing them to serious illnesses. The effects can be weight loss, fatigue and weakness, respiratory impairment, light sensitivity or visual impairment, difficulty concentrating, chronic diarrhoea, the side-effects of medication, depression and psychological impact.

Is it covered by the DDA?

Since 5th December 2005, HIV has been deemed a disability as soon as it is diagnosed.

Reasonable adjustments

Always consult the worker. Medication has improved the health of people living with HIV enormously, but the side-effects of the drugs also have to be dealt with. Some people have to take a large number of pills daily at specific times and accompanied by dietary restrictions. Adjustments depend on the nature and severity of the worker's condition. These are some suggestions.

- ❑ Allow flexi-time or the worker to start later.
- ❑ Ensure drinking water is available.
- ❑ Provide easy access to food or kitchens and be flexible over eating times.
- ❑ Provide safe and confidential places for storage of medication.
- ❑ Allow the worker time off for medical appointments or if unwell.
- ❑ Notify the worker in advance of changes to routine, eg training days, travel or overtime requirements.
- ❑ Ensure nearby access to toilets (medication can cause chronic diarrhoea).
- ❑ Provide ergonomic chairs if severe weight loss.
- ❑ Give time-off for counselling; allow telephone calls to emotional supports.
- ❑ For weakness or fatigue: allow reduced hours; provide rest areas and breaks; arrange reduced lifting and walking.
- ❑ For difficulty in concentration, see adjustments suggested for Dyslexia (p62).
- ❑ For any visual impairment or light sensitivity, see adjustments suggested for Visual impairment (p98) or Migraine (p84).

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

Information is available from AVERT, an international AIDS charity, on www.avert.org You can buy a briefing from the Employers' Forum on Disability at a low price ("A practical guide to employment adjustments for people with HIV") through its website at www.efd.org.uk The National AIDS Trust have produced a resource pack – "**HIV@work: addressing stigma and discrimination**" – available for purchase on www.nat.org.uk

Although an American website, the Job Accommodation Network site at www.jan.wvu.edu/media/HIV.html has useful suggestions on its HIV fact sheet.

INFLAMMATORY BOWEL DISEASE

Crohn's disease and ulcerative colitis are two different forms of inflammatory bowel disease (IBD). They are both chronic diseases affecting the digestive tract. About 1 in 400 people in the UK are affected by IBD. The main symptoms are abdominal pain, urgent diarrhoea, tiredness and weight loss. It is sometimes associated with fever, arthritis and inflammation of eyes, mouth or skin. There can be long periods of remission with no symptoms, and unpredictable relapses when symptoms flare up to varying extents. Treatment is mainly by drugs and occasionally by surgery, but there is no permanent cure (except for ulcerative colitis, if the colon is surgically removed).

Irritable bowel syndrome (IBS) is a different condition altogether and not within the heading of IBD. However, certain symptoms are similar, eg a need to rush to the toilet. It is more common, but far less serious.

Is it covered by the DDA?

There are cases where workers with colitis or with IBS have been covered by the DDA. The most obviously affected activities are:

- Continence
- Mobility

Once onset, IBD is generally a permanent condition. However, the effects tend to be fluctuating with periods of remission. Since the substantial adverse effect is likely to recur, it should be considered long-term.

Reasonable adjustments

Where continence is an issue, quick and easy access to a toilet is important. The usual adjustments should be made in respect of pain and tiredness, eg:

- Allow more breaks.
- Offer shorter or flexible hours.
- Let the worker avoid rush hour travel.
- Allow the worker to work in an office nearer his or her home.
- Allow home working.

Real tribunal cases:

- In several cases, tribunals have suggested relocation to an office nearer the worker's home would be a reasonable adjustment.
- See *Norcup v The Commissioners of Inland Revenue*, p36.

Patel v National Grid Transco PLC

Mr Patel worked in Leicester, where he lived. When the finance team transferred to Mansfield, Mr Patel did not initially tell his employer that he would have difficulty travelling because of his colitis. He did eventually tell them this, but was informed he must work at Mansfield while he applied for other vacancies. He was unable to commute for 90 minutes daily and stress exacerbated his symptoms. The company did nothing to stop Mr Patel travelling in, even though there was no pressing need for his services. He was offered a temporary lower-grade position in Leicester only after his union intervened. Mr Patel performed badly at an interview for a vacancy because by now he was so unwell. The interview was not postponed, and the interviewers had not been told of his disability. As there were no other suitable vacancies, Mr Patel was dismissed.

The tribunal found the company had failed to make reasonable adjustments. For example, it should have considered relocation of suitable jobs. It should have encouraged him to reapply for suitable vacancies and made the interview panel aware of his disability in order to assist him.

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

LEARNING DISABILITY OR LEARNING DIFFICULTIES

People with learning disability (some prefer to say “learning difficulties”) are one of the most marginalised groups in society. Although a small proportion are successfully employed in a wide range of jobs, the vast majority have a level of unemployment below that of other disabled people. The government is keen to address the difficulty people with learning disability have in finding and keeping jobs.

There are no reliable statistics, but it is estimated that broadly 1.5 million people have learning disability in the UK, of whom approximately 300,000 have severe learning disability.

Learning disability is not a mental illness. It is a life-long condition acquired before, during or soon after birth, which affects intellectual development. The World Health Organisation defines learning disability as “a state of arrested or incomplete development of mind”, entailing a significant impairment of intellectual functioning or adaptive/social functioning. As with most disabilities, learning disability can be mild, moderate or severe.

People with learning disability generally find it harder to understand and remember new or complicated information, to generalise any learning to new situations, and to learn new skills, whether practical or social, eg communication or self-care. Some people may have difficulty speaking or be unable to read. Those with more severe difficulties may need help in getting dressed or making a cup of tea.

It is possible that the worker will have received a statement of Special Educational Needs while at school (sometimes referred to colloquially as being “statemented”).

Is it covered by the DDA?

Learning difficulty is a recognised mental impairment and there are cases where workers with learning difficulties have been covered by the DDA. The most likely activities to be affected are:

- Speech, hearing or eyesight
- Memory or ability to concentrate, learn or understand
- Perception of the risk of physical danger

Note that inability to “understand” is not restricted to understanding information, knowledge or instructions, but includes understanding normal social interaction among people.

Reasonable adjustments

Discuss these with the worker and an appropriate helper or friend. Depending on the severity of the worker's disability, adjustments could include:

- ❑ Allowing assistance with completion of a job application form.
- ❑ Conducting the interview at a slow pace.
- ❑ Asking short direct rather than long hypothetical questions.
- ❑ Using practical rather than written tests.
- ❑ Offering a work trial as an alternative means of assessing ability.
- ❑ Providing training and ongoing support in new tasks.
- ❑ Adding new tasks one at a time.
- ❑ Permitting low work hours, especially at first.
- ❑ Speaking slowly in plain jargon free English.
- ❑ Explaining procedures, eg for health and safety.
- ❑ Explaining significance and potential consequences of disciplinary hearings.
- ❑ Using graphics to assist understanding.
- ❑ Training co-workers on effective communication and support.

The Code gives these examples:

- ❑ Allowing the worker to take a friend from outside to any grievance or disciplinary meeting. (Code, 5.20; 8.26)
- ❑ Conducting a grievance meeting in a way which does not disadvantage or patronise the worker. (Code, 5.20)
- ❑ Allowing the worker to bring a supportive person to a job interview to assist in answering questions that are not part of the assessment itself. (Code, 7.22)
- ❑ Putting on longer and specially adapted induction training or allowing someone to sit with the worker on the induction training. (Code, 8.7)
- ❑ Giving extra training when changing the worker's role on any reorganisation. (Code, 8.18)

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Real tribunal cases

Francis v Celia Hammond Animal Trust and Smith

Ms Francis was employed to feed animals, clean their cages and administer medication for the Trust. She worked Saturday – Wednesday each week. She had a mobility impairment as well as learning difficulties, which affected her concentration and her ability to learn and understand. She found weekend working more physically demanding because there were fewer feeders on duty. On one occasion, for example, she could not walk the next day. After some discussions about changing her working days, Ms Francis’s mother helped her write a letter asking to have one complete day off at weekends. The letter explained she had not had the confidence to decline her manager’s less suitable suggestions when they had spoken. The letter alerted her manager for the first time to the fact that she had a learning difficulty. At a meeting between Ms Francis and her manager, an alternative proposal could not be agreed and Ms Francis was dismissed. Ms Francis’s brother accompanied her to work a few days later and explained that Ms Francis was prepared to work her existing hours as she did not want to lose her job. He referred to his sister’s lack of confidence and difficulties in expressing herself. The manager responded by saying that she didn’t think Ms Francis had any such problems. Ms Francis became very upset and left the meeting. On her return, her manager commented that she was probably deceiving her brother as to her professed difficulties. This made Ms Francis even more upset and she brought a tribunal claim.

The tribunal upheld Ms Francis’s claim for disability-related harassment. Ms Francis had been diagnosed with learning difficulties at school and was still affected. Her manager had challenged her honesty and also suggested she was deceiving her own family. It was unsurprising she became very upset. Whatever the purpose of the remarks, the effect was that they created an intimidating, hostile, degrading, humiliating and/or offensive environment for Ms Francis.

Sources of further information

Useful websites are Mencap at www.mencap.org.uk, the British Institute of Learning Disabilities at www.bild.org.uk, and the Foundation for People with Learning Disabilities at www.learningdisabilities.or.uk

“I want to work – a guide to employing people with a learning disability” is available on the Mencap website via a link on

[www.mencap.org.uk/document.asp?id=4396&audGroup=&subjectLevel2=&subjectId=&sorter=1&origin=pageType&pageType=112&pageno=&searchP](http://www.mencap.org.uk/document.asp?id=4396&audGroup=&subjectLevel2=&subjectId=&sorter=1&origin=pageType&pageType=112&pageno=&searchPhrase=)
hrase=

M.E. OR CHRONIC FATIGUE SYNDROME

ME (Myalgic encephalomyelitis) is also known as Chronic Fatigue Syndrome (CFS), although strictly speaking there are some slight differences between the two. Occasionally it may be diagnosed as Post Viral Fatigue Syndrome.

It is estimated that there are up to 240,000 people with CFS/ME in the UK. Historically there has been much scepticism about CFS/ME, and unfortunately some GPs still hold the view that it is all in the mind. However, the government has now recognised that CFS/ME is a “debilitating and distressing condition”.

It has been found that people with CFS/ME have abnormalities in the nervous and immune systems, although these abnormalities are not properly understood. CFS/ME is difficult to diagnose. Much of the diagnosis is based on identification of core symptoms persisting over six months and taking tests to rule out other conditions.

Symptoms are very variable and can be mild or severe. The most common symptoms are overwhelming and persistent fatigue following mental or physical activity (often a delayed reaction), muscle pain, inability to concentrate, problems organising thoughts, memory loss, sleep difficulties. Other symptoms may include dizziness, migraines, increased sensitivity to light and noise, digestive problems, irritable bowel syndrome, poor temperature control and feeling generally unwell. People with CFS/ME tend to have good days and bad days. Overdoing it on good days can worsen the symptoms. CFS/ME may also cause depression (see p53).

Is it covered by the DDA?

As explained above, CFS/ME is now a recognised impairment and there are cases where it has been found to be covered by the DDA. Almost all day-to-day activities can be adversely affected because of the effect of overwhelming tiredness. The symptoms of CFS/ME can be exacerbated by infections, mental or physical stress, or temperature extremes, and this must be taken into account.

The illness varies greatly in its duration but is highly unlikely to last less than one year. Some people may recover after ten years. Others may never completely recover. ME/CFS can also occur in cycles with apparent recovery and then a relapse.

Reasonable adjustments

International research suggests that 25 – 50% of people with CFS/ME are unable to maintain previously held employment. Nevertheless, as the severity of symptoms does vary, it is important to identify adjustments which will enable a certain proportion to continue in work. These are some suggestions:

- Allow the worker to reduce or change working hours or allow flexi-time.
- Allow home working.
- Allow increased rest breaks and a self-paced workload.
- Arrange the workplace so less walking or physical exertion is necessary.
- Reduce stress factors.
- Provide memory aids, eg organisers and written job instructions.
- Minimise distractions.
- Enable the worker to control his or her workplace temperature.
- Relax any dress code.
- Avoid fluorescent lighting; provide window blinds.
- See also adjustments relevant to Migraine (p84), Depression (p53), for some forms of muscle weakness, see RSI (p91).

London Borough of Hillingdon v Morgan

Ms Morgan worked as a service information officer for the council. After 8 months absence on sick leave due to ME, occupational health and her own doctors recommended a gradual return to work, starting on a part-time basis. Ms Morgan did return to work, but no arrangements were made for her support. Her request to work part-time at home on a temporary basis was refused. Instead, she was put into the redeployment pool, where she was considered for vacancies before they were advertised. Ms Morgan could not cope with the stress of her job and resigned.

The employment tribunal found failure to make reasonable adjustments. The council should have allowed a graded return to work and offered short periods of work initially. Unlike occupational health, personnel had adopted a negative attitude. Ms Morgan would have been fit for many of the jobs which came up for redeployment had her return been gradual in stages.

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

Action for M.E. has an informative website from which you can download “All about M.E.: an introduction” at **www.afme.org.uk**

The ME Association also provides information on **www.meassociation.org.uk** and tel: 01375 642466.

The Department of Health’s website at www.dh.gov.uk contains details of the government’s investment in the development of clinical services for CFS/ME.

The section on CFS/ME on the Job Accommodation Network website, even though an American site, is extremely useful:

www.jan.wvu.edu/media/employmentcfsfact.doc

MENTAL HEALTH ISSUES

The Mental Health Foundation says 1 in 4 people in the UK will experience some kind of mental health problem in the course of a year. A complete list of mental and behavioural disorders is given in the World Health Organisation's International Classification of Diseases (ICD-10). Depression and anxiety are the two most common forms of mental illness. It is estimated that 1 in 6 people will have depression at some point in their life. Clinical depression is dealt with in more detail at p53.

Unfortunately, research by the TUC indicates that people with mental health problems face the worst discrimination and few employers have policies on this. The Department for Work and Pensions has said there are many misunderstandings and prejudices around mental illness among employers.

Mental health issues include:

- **Manic Depression or Bi-Polar Affective Disorder.** This is a mood disorder, where a person's mood swings from depression to euphoric. About 1 in 100 people have manic depression, but there is great variation in the pattern of mood swings and some people have long periods with no problems. Symptoms during the depression phase are as described on page 00. Symptoms of the manic phase may include speeding up of thought and speech, inappropriate optimism, gross overestimation of personal ability, unrealistic plans and poor judgment. A person may experience hallucinations and delusions in both phases. Treatment can be by antidepressants, tranquillisers, sleeping pills and therapy.
- **Schizophrenia.** About 1 in 100 people have one episode of schizophrenia and two thirds of these have further episodes. During an episode, a person may lose touch with reality and experience delusions and visual or auditory hallucinations. An episode may last a few weeks. Longer-lasting symptoms include tiredness, lack of energy and loss of concentration. Treatment is usually by medication for lengthy periods. The drugs may have unpleasant side-effects.
- **Post-Traumatic Stress Disorder (PTSD).** This is a reaction to witnessing or experiencing a traumatic event, eg rape, sexual harassment, an accident or natural disaster. Common symptoms include flashbacks and nightmares, severe anxiety, poor sleep and depression. Counselling and anti-depressants are often prescribed.
- **Obsessive Compulsive Disorder (OCD).** This involves repetitive obsessional thoughts and compulsive behaviour to relieve anxiety,

eg repeated washing to avoid germs or going back to check the oven is switched off when leaving the house. Other fears can include fear of making a mistake or behaving unacceptably or causing harm to someone else. Counselling and therapy is the usual treatment and the worker may also take medication.

- **Paranoid Personality Disorder.** Paranoia may be a symptom of another mental health problem or it may be considered a disorder in itself. Symptoms can include being very suspicious and misconstruing friendly or neutral behaviour as hostile, belief in conspiracy theories, extreme sensitivity to rejection, and holding grudges.
- **Panic Disorder.** Panic attacks cause extremely unpleasant physical sensations, including breathlessness, palpitations, dizziness and sweating. The person has an intense sensation of fear and sometimes feels they are going to die.
- **Agoraphobia.** See p39.
- **Seasonal affective disorder (SAD).** See p95.

Is it covered by the DDA?

The DDA applies to serious mental illnesses and there is usually no doubt that these are covered. The two activities most likely to apply are:

- Memory or ability to concentrate, learn or understand
- Perception of the risk of physical danger

Where medication, counselling or therapy reduces the effect of an impairment, the test is the effect without such medical treatment.

Many of these serious conditions are likely to be long-term, but this needs to be checked in each case. Some conditions will have periods of remission, but should be treated as long-term in that they are recurring.

Reasonable adjustments

Always consult with the individual regarding suitable adjustments. Many of the adjustments suitable to ordinary Depression (p53) will be suitable here.

Sources of further information

The Mental Health Foundation has an excellent website including fact-sheets on an A-Z of conditions at www.mentalhealth.org.uk

The Shaw Trust has established a website at www.tacklementalhealth.org.uk which advertises itself as a one-stop shop with easy to use solutions to help employers support staff who are dealing with mental health issues. It also offers a mental health helpline for employers to discuss the issues – for details e-mail mentalhealthline@shaw-trust.org.uk

The Job Accomodation Network, an American website, provides a very useful fact sheet on accomodating people with Post-Traumatic Stress Syndrome at www.jan.wvu.edu/media/ptsd.html

MIGRAINE

The Migraine Trust says that 6 – 10 million people in the UK suffer from migraine and estimates that each working day, up to 90,000 people are absent from work or school due to migraine. In a 2002 report, the World Health Organisation ranked migraine amongst the world's top 20 disabling conditions. Yet migraine frequently is not taken seriously. In a recent survey by the Migraine Trust, workers felt that few employers understood their condition and confused it with "just a headache".

Migraines are not ordinary headaches. Migraine is a condition of recurring headaches of a particular kind. There are often other symptoms, eg sensitivity to light and noise, eyesight changes, lethargy and nausea. About 15% of migraine sufferers have migraine with "aura", ie neurological symptoms such as changes in sight (zigzags, dark spots etc), disturbances to speech and hearing or, more rarely, partial paralysis. Migraine attacks usually last one or two days.

Is it covered by the DDA?

There are cases where a worker with migraine has been covered by the DDA. This will depend on the severity and frequency of the migraines. The most obviously affected activities are:

- Memory or ability to concentrate, learn or understand
- Mobility
- Physical coordination
- Speech, hearing or eyesight

The worker may take pain relief when a migraine occurs or ongoing medication to prevent attacks. As always, where medication reduces the effect of the migraine, the test is the effect without medication.

Migraines are intermittent, but would usually be covered as a recurrent condition, except where they occur at extremely infrequent intervals.

Reasonable adjustments

The difficulty with migraines is their unpredictability. Reasonable adjustments may be either to prevent attacks or to allow absence when the worker has a migraine. Always ask the individual, but examples of adjustments could be:

- Allowing time off (paid or unpaid) or flexible hours.
- Allowing home working during an attack (sometimes it is the travel to work which is unmanageable).
- Avoiding fluorescent lighting.

- ❑ Installing computer glare guards.
- ❑ Reducing visual or auditory distraction; providing an environmental sound machine to block out noise.
- ❑ Avoiding any identified trigger factors at work (eg, long working hours without regular food breaks; night working; fan heaters).
- ❑ Allowing food at the work station.

The Code gives this example:

- ❑ Keeping the worker off night shifts if these trigger migraines, even if other workers do not want to work night shifts for reasons unrelated to disability. (Code, 5.42)

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

The Migraine Trust is very informative. It has a newsletter and website on www.migrainetrust.org and tel: 020 7831 4818. There is an information pack, 'Working with Migraine' including best practice guidance for employers, available as a free download via a link on www.migrainetrust.org/C2B/document_tree/ViewADocument.asp?ID=135&CatID=93

Although an American website, the Job Accommodation Network site at www.jan.wvu.edu/media/Migraine.html has useful suggestions on its migraine fact sheet.

MOBILITY IMPAIRMENT

Mobility impairment can be due to leg or foot impairment, general muscular weakness, illness or injury. People may not need an aid or may use an aid some or all of the time, eg a stick, crutches or a wheelchair. Depending on the reason for the mobility impairment, a person may have other impairments. A wheelchair user may have full, partial or no use of his or her upper limbs.

Is it covered by the DDA?

Mobility impairments are likely to be covered by the DDA, provided they are long-term. Many day-to-day activities may be affected, as the reason the worker has a mobility impairment may be due to a variety of different underlying conditions.

Most likely to be affected would be:

- Mobility
- Ability to lift, carry or move everyday objects

Where a wheelchair, stick or crutches enable a worker to move around, the test is his or her mobility were he or she not using such aids.

Reasonable adjustments

Appropriate adjustments will depend very much on the nature of the impairment and the individual should be consulted. These are some suggestions:

- Provide accessible toilets; include handrails.
- Put non-slip grips on stairs.
- Ensure accessible routes between office and car park, toilets, coffee machine, colleagues.
- Locate office, meetings, training on the ground floor or with lifts or ramps.
- Provide handrails on any stairs used by the worker. Do not isolate the worker from colleagues. Make sure the arrangements are not such that the worker feels obliged to walk up and down stairs simply to get things done or maintain contact with colleagues, when he or she is not easily able to do so.
- Arrange corridors, hallways, reception areas and walking routes with sufficient floor space and keep obstruction free.
- Where the worker uses lifts, establish safe fire evacuation procedures.
- Reduce or remove the worker's need to carry files or heavy objects around, eg by better lay-out, mechanisation, computerisation, the assistance of an unskilled worker to lift and move.
- Adjust office layout – provide a height adjustable desk; ensure the accessibility of files, equipment, the photocopier and the coffee machine from a seated position.

- If the worker has restricted use of upper limbs – provide an automatic stapler; writing aids; voice-activated telephone or head-set. See also adjustments suggested for RSI (p91).

The Code gives these examples:

- Widened doorways; ramps for wheelchair users. (Code, 5.18)
- Relocating light switches, door handles and shelves within reach. (Code, 5.18)
- Designated car parking space close to the office, even if this is normally reserved for senior managers. (Code, 5.8)

Real tribunal cases:

A tribunal said the following adjustments should be made for a clerical worker who used a wheelchair and had restricted use of his arms:

- Desktop photocopier.
- Computerising his paperwork or assigning an unskilled person to lift and move his files.
- Ground-floor working or reassurance on the safety of the lift.

Browne v Greater London Magistrates Courts Authority

Mrs Browne, a court usher, suffered from chronic pain in her feet. From 1999 until her resignation in August 2002, she continually asked her employer to be rostered half days only for court work, where she had to stand, so that she could spend the other half day sitting down at office duties. Despite support from her consultant and the occupational health physician, this was never done.

The employment tribunal decided it would have been a reasonable adjustment to arrange Mrs Browne's rota as she had requested and awarded £206,415 compensation, including £15,000 injury to feelings and substantial future loss of earnings.

Where there is a related restriction on use of upper limbs, see Shoulder, Arm or Hand impairment (p97). See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

The American website, the Job Accommodation Network site at www.jan.wvu.edu/media/Wheelchair.html has a fact-sheet on adjustments for office workers who use wheelchairs. A useful site concerning plantar fasciitis, a foot impairment, is on www.heelspurs.com

MULTIPLE SCLEROSIS

Multiple Sclerosis (MS) affects approximately 85,000 people in the UK. It is a complex neurological disorder affecting the central nervous system. Potentially it affects a whole range of physical or mental functions, but most people only experience a few aspects.

Possible symptoms are muscle weakness, most commonly in the legs, spasms or tremor, dizziness and balance difficulties, pain from poor posture or positioning, visual disturbance, speech disorders, needing to go to the toilet frequently and urgently, severe fatigue, pain, problems with short-term memory and concentration. Symptoms vary in their severity and duration, and can be exacerbated by heat, exercise (raising body temperature), stress and overwork. The symptoms of MS come and go and it can be in remission for very long periods.

Is it covered by the DDA?

Since 5th December 2005, MS has been deemed a disability on diagnosis.

Reasonable adjustments

Always consult the worker. Depending on the nature of the worker's symptoms:

- ❑ Adjust hours to avoid rush-hour travelling.
- ❑ Reduce hours or provide extended breaks to assist with tiredness.
- ❑ Provide lifts or locate the worker on the ground floor, provide handrails on any stairs used by the worker. Do not isolate the worker from colleagues. Make sure the arrangements are not such that the worker feels obliged to walk up and down stairs simply to get things done or maintain contact with colleagues, when he or she is not easily able to do so.
- ❑ Ensure an ergonomic workplace design.
- ❑ Ensure doors are not heavy to open and close.
- ❑ Locate the worker with easy access to toilets; ensure toilets are user-friendly, eg grab bars to hold onto.
- ❑ If the worker has a visual impairment, see Visual impairment (p98).
- ❑ If the worker has concentration difficulties, see suggestions for Dyslexia (p62).

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

The Multiple Sclerosis Society at www.mssociety.org.uk

Although an American website, the Job Accommodation Network site at www.jan.wvu.edu/media/MS.html has useful suggestions on its MS fact sheet.

RSI

The TUC estimates each year 400,000 people suffer from upper limb or neck disorders. The Health and Safety Executive says it is estimated that 4.1 million working days were lost in 2001/2 through musculoskeletal disorders mainly affecting the upper limb and necks, caused or worsened by work.

RSI (Repetitive Strain Injury) is an umbrella term for a range of painful conditions affecting the musculoskeletal system. An alternative umbrella term for many of these injuries is Work Related Upper Limb Disorder (WRULD). The Health & Safety Executive uses the term ULD (Upper Limb Disorder) under a general heading of Musculoskeletal Disorders, which also includes back pain (see p48).

RSI is usually caused or aggravated by work and is associated with repetitive movement, sustained or constrained postures and/or forceful movements. It includes many different localised conditions, eg bursitis, carpal tunnel syndrome, tenosynovitis, tendinitis, epicondylitis (including tennis elbow), writers' cramp, white finger or Raynaud's syndrome. There is also diffuse RSI, which spreads through areas of the body and is harder to diagnose.

Workers particularly at risk include those using computers, working on assembly lines, manual labourers, bus and lorry drivers, cashiers, cooks, cleaners and housekeepers, hairdressers and ambulance workers. RSI is a growing problem with the vast increase in computerisation.

RSI is often incorrectly diagnosed and a report from a specialist will probably be needed for a tribunal. There is a certain amount of scepticism about RSI, particularly the diffuse form, which may show no visible signs of injury and be regarded as all in the mind. However, research carried out at University College, London indicates a possible cause may be nerve damage (see site of RSI Association, below).

Common symptoms are pain, loss of grip, loss of movement, muscle weakness or spasm, numbness, sensation of cold, burning sensation, pins and needles. RSI is a progressive condition and usually goes through 3 broad stages. Initially pain, aching and tiredness of muscles improves overnight, but eventually it remains even when the worker is resting completely. Some conditions can become irreversible. It is very important to recognise symptoms early and take remedial action.

Depending on the form of RSI, workers may find they are unable to write, type, dial or hold a telephone receiver, turn on taps, brush teeth, comb hair, get dressed, operate domestic machinery, do housework, iron, cook, bath a baby, make a sandwich, grip a cup of coffee, use a knife, hold a tray, put up a picture, drive, sew on a button, open drawers and doors.

It is relevant if the activities can only be performed very slowly or with pain; or only in the morning (after overnight rest); or provided it is not too cold or if the worker is under stress (when muscles tense up); or in an unusual way (eg using an electric toothbrush).

Is it covered by the DDA?

Workers with various forms of impairment under the RSI umbrella have been covered by the DDA. The most obviously affected activities are:

- Mobility
- Manual dexterity
- Physical coordination
- Ability to lift, carry or move everyday objects

The test is the effect if the worker were not using any painkillers.

Reasonable adjustments

As always, appropriate adjustments will depend on the individual situation and the worker should be consulted. The following are suggestions:

- You should carry out a risk assessment - the Health & Safety Executive has produced risk assessment checklists. You should also set up an internal reporting system and monitor for early signs of RSI.
- Review the design of tools, workplaces and tasks; keep tools lightweight, sharpened, lubricated and easy to use; provide powered versions if possible; arrange for the mechanical moving of loads; arrange smaller loads and reduced carrying distances; use levers; provide training on lifting techniques.
- Provide tools and equipment to meet individual needs; ensure women need not use tools designed for men.
- Redesign tasks to minimise repetitive movement; redesign the work station so everything is within easy reach; provide adjustable work benches; use proper ergonomic design.
- Reduce conveyor belt speed.
- Reduce use of vibrating tools; use vibration absorbing grips; install rubber flooring to absorb vibration.

- Reduce time working in cold environment; give warm breaks; provide protective clothing (though gloves can increase problem by making grip difficult).
- Provide electronic staplers, easy grip pens, headset telephone.
- Restrict intensive keyboard work; keep deadlines reasonable; train in touch typing; install good lighting to avoid the worker hunching to see the screen; provide document holders; provide an adjustable chair.
- Provide alternatives to the mouse; provide voice recognition software and allow extra time for its use; train in the use of specialist software.
- Pay for eye tests - in any event, employers must pay for eye tests if requested, where the worker uses a VDU as a significant part of his or her work.
- In general, avoid repetitive work and incentives to carry it out at a high pace; give breaks for rest and recovery; give workers more control over their work rate and breaks; vary tasks and rotate job. Train workers and supervisors on risks. Reduce stress factors (mental or physical).
- Give time off to recover, with a staged return, and to an improved workplace (otherwise injury will recur).

The Code gives these examples:

- Letting a job candidate with RSI take an administrative test using voice-activated software, if this is how he or she would carry out the job if appointed. (Code, 7.25)
- Different or longer training on new machinery for workers with restricted hand or arm movements. (Code, 5.18)
- Relocating light switches, door handles or shelves for someone who has difficulty reaching. (Code, 5.18)

For further examples, see Shoulder, Arm and Hand Impairment (p97).

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Note: if the employer's negligence has caused the RSI or if the employer refuses to make improvements and the worker's condition becomes worse, the worker may have grounds for claiming personal injury.

Sources of further information

The London Hazards Centre operates an advice line on 020 7794 5999 and has produced an extremely useful handbook (“RSI Hazards Handbook”, 1996,) on its website at www.lhc.org.uk/members/pubs/books/rsi/rsi_toc.htm

RSI Awareness (RSIA) is at www.rsi.org.uk There are a number of fact-sheets on different conditions and its information pages are very informative.

The Health & Safety Executive has an informative section on musculoskeletal disorders and upper limb disorders on its website: www.hse.gov.uk . There are various guides available at www.hse.gov.uk/msd/information.htm For example, you can download “Display Screen Equipment (Working with VDUs)” and “Aching arms (or RSI) in small businesses”. You can send off for further information in “Upper Limb Disorders in the Workplace”.

Ability Net is a charity providing free information and advice on computer technology for people with disabilities. Tel: Freephone 0800 269545 (if you call from home)
or 01926 312847 (if you call from work) and website: www.abilitynet.org.uk

SEASONAL AFFECTIVE DISORDER (SAD)

SAD is a type of depression which has a seasonal pattern, most commonly occurring in the winter months when daylight hours are shortest. Symptoms tend to fade away as Spring approaches. People can be affected in the summer, but this is rare and has different symptoms.

SAD should be taken seriously. It can be a serious disabling illness. The term, SAD, was invented in 1984 and it is now included in the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association (one of two standard diagnostic manuals used by psychiatrists for diagnosis). SAD is also recognised by the NHS. According to NHS Choices, around one in 50 people in the UK has SAD, and the condition affects twice as many women as men. People can be affected at any age, but SAD is most common for those aged 18 – 30.

SAD is diagnosed when there is a relationship between the onset of major depressive episodes and a particular time of year, eg Autumn or Winter, with full remissions also occurring at a characteristic time of year, eg Spring. In 30% of cases, people experience a seasonal mood swing from depression to elation, which may even amount to a hypomania if severe. The American Psychiatric Association's diagnosis says the seasonal pattern must have occurred in the previous two years, there having been no non-seasonal major depressive episodes in that period. SAD may not be suggested if there is some other seasonal cause of depression, eg seasonal unemployment.

SAD's symptoms are characteristically those associated with depression, eg feeling low, decreased energy, increased irritability, concentration difficulties, anxiety and social withdrawal. Additionally, most people develop symptoms less common in classical depression, eg needing more sleep and a tendency to oversleep, difficulty staying awake during the day, incapacitating fatigue making normal tasks very difficult, increased appetite and craving for carbohydrates.

The most successful form of treatment is phototherapy - daily exposure to high-intensity broad-spectrum light, usually provided by a specially designed light box. Certain anti-depressant drugs may help, but not the ones which exacerbate the lethargy and need to sleep. Cognitive behaviour therapy may help some people cope with the symptoms.

There is a milder form of SAD which is still clinically significant, sometimes known as 'subsyndromal SAD' (S-SAD). This milder form may be known as 'winter blues'. It is estimated that one in eight people have this milder condition.

Is it covered by the DDA?

The effects of full-blown SAD are very likely to bring it within the definition of 'disability' under the DDA. With S-SAD, it will depend on the seriousness of the effects. Although SAD may only last a few months, it is considered to have long-term effect because it is likely to recur.

The most obviously affected day-to-day activities are in the realm of:

- Mobility (*Guidance*, D20)
- Memory or ability to concentrate, learn or understand (*Guidance*, D26)

Many other activities may be affected if, for example, the worker takes substantially longer to carry them out due to fatigue, lack of energy or lack of concentration, or the cumulative effects of these factors.

Reasonable adjustments

The obvious adjustment is to supply a light box. For sub-syndromal SAD, reasonable adjustments may be as simple as letting the worker sit by a window and take tea-breaks outside.

These kind of adjustments would be unlikely to assist in the rare cases of summer SAD.

Adjustments appropriate to many forms of depression may also help with the feelings of tension, irritability and lethargy, see Depression, p53.

Sources of further information

The Seasonal Affective Disorder Association offers support to those suffering from SAD and provides some basic information on its website at www.sad.org.uk

SHOULDER, ARM OR HAND IMPAIRMENT

Disabilities connected with arms or hands are amongst the commonest form of disability founding cases under the DDA.

Is it covered by the DDA?

Many shoulder, arm or hand impairments fall within the definition of “disability”. The most obviously affected activities would be:

- Manual dexterity
- Physical coordination
- Ability to lift, carry or move everyday objects

Reasonable adjustments

Suitable adjustments are similar to those suitable for RSI (p91) or Back impairment (p48). There may sometimes be a link with a Mobility impairment (p87) as in the following case.

Nimsiima v London Borough of Waltham Forest

Mr Ninsiima worked as a full-time financial assessment officer for the Council for 5 years until he resigned. He was a wheelchair user. His right arm was weak and his left arm could not be used in extreme situations. He had only limited ability to reach upwards or downwards. Mr Ninsiima was absent for 5 months with stress and pain caused by the lay-out of the office, which caused him difficulties. He worked on the 2nd floor, but the lift was not readily accessible to his workplace, which made him particularly anxious about what would happen if there was a fire. Mr Ninsiima also found it awkward to reach the controls on the photocopier. There was an enormous amount of paperwork in his job which was all file-based. He had to constantly lift, open, move and write in files. This was all a strain.

The employment tribunal said the employers failed in their duty to make reasonable adjustments. Many adjustments could have been made by an employer with such big resources. The council also had access to outside funds to help make adjustments. Mr Nimsiima could have been provided with a desk-top photocopier which would have been more easily reached by him. His work could have been more computerised or alternatively, an unskilled person could have been assigned to help him lift and move files. Regarding the lift, he could have been allowed to work on the ground floor.

Sources of further information

See sources listed under RSI (p91).

VISUAL IMPAIRMENT

The RNIB estimates there are approximately 140,000 blind or partially sighted people of working age, but only 27% of these are in employment. This is a much lower figure than for people with disabilities generally, let alone compared with the entire population of working age. This is not surprising. RNIB research indicates that 9 out of 10 employers believe employing a blind person would be difficult or impossible. Moreover, over 75% of employees eventually lose their job if they lose their sight.

Well over a million people have some form of visual impairment. There are many different eye conditions of varying severity, some of which may slowly deteriorate. Some conditions involve loss of peripheral vision alone or central vision alone, blurred or patchy eyesight. The effect on the person's ability to see will vary and can cause others to think there is less difficulty than is in fact the case.

Is it covered by the DDA?

Deemed disability:

Workers registered with a local authority or certified by a consultant ophthalmologist as blind or partially sighted are deemed disabled without the need to prove the stages of the definition. (The Disability Discrimination (Blind and Partially Sighted Persons) Regulations SI 2003/712.)

In other situations, the worker needs to prove the stages of the definition in the usual way. The most obviously affected activity is:

- Speech, hearing or eyesight

The worker is likely to have a disability if he or she cannot read ordinary newsprint without difficulty or cannot visually recognise a known person across a moderately sized room. These are just examples and there may be different adverse effects.

Unlike for other disabilities, the test is the effect of the impairment when the worker is wearing corrective glasses or contact lenses.

Reasonable adjustments

As always, consult the worker. Depending on the nature and severity of his or her condition, these are some suggestions:

- Allow the worker to bring his or her working dog onto the premises.
- Provide written information (eg recruitment packages and application form, training manuals, minutes of meetings, letters and memos, time-tables, schedules) in large font, Braille or on audio tape. Use a thick black pen for writing.
- Provide application forms with larger spaces as the worker's handwriting may be larger than average.
- Use readable print: 14 or 16 point font; black or dark ink; white or yellow paper; matt not glossy paper. Use a simple and uncramped lay-out with evenly spaced words and unjustified right hand margins. Do not use italics or continuous capitals. Use plain type faces, particularly for numbers.
- Provide written materials in advance of training.
- Provide information, eg recruitment packs, well in advance of any deadlines, as it may take the worker longer to read a lot of documentation.
- Provide a document holder for the desk; a hand-held magnifier; an enlarging photocopier.
- Provide a thick black pen or audio tape recorder for note-taking.
- Provide a large PC monitor and a keyboard with large print letters.
- Provide adapted software together with training and sufficient time to learn to use it, eg PC with a magnification system; a text scanner to transfer text on paper to screen; voice-activated software; speech output software (converts text on screen to speech); computer Braille display (transforms text on screen to Braille).
- Provide a support worker or reader for some of time.
- Install appropriate lighting; reduce glare; provide specialist lighting.
- Use colour contrasts in the office and building; use colour strips on the edge of stairs.
- Provide alternative transport to driving.
- On recruitment interviews or training or meetings at new places, meet the worker at reception.
- Provide orientation training when the worker starts the job.
- Provide an evacuation partner for emergencies.
- For those losing their sight while in work, provide disability leave for intensive rehabilitation.

The Code gives these examples:

- Removing clear glass doors from the end of a corridor. (Code, 5.9)
- Providing a support worker to accompany the worker if he or she needs to make home visits. (Code, 5.18)

Real tribunal cases:

Tribunals have made these suggestions:

- Acquiring and adapting suitable software and providing adequate training on it.
- Allowing home working.
- Ensuring a job candidate is met at reception on arrival for an interview.

- Providing a teacher with a classroom assistant.

See p14 for general adjustments suggested in the DDA and p23 for further suggestions.

Sources of further information

The RNIB has an excellent website at www.rnib.org.uk The site includes a description of common eye conditions, technology information sheets, guidance on web accessibility and the “See it right” pack on producing accessible written information. The latter is available at rnib.org.uk/xpedio/groups/public/documents/publicwebsite/public_seeitright.hcsp

To fully benefit from its services, however, it is necessary to get in contact with the RNIB (helpline tel: 0845 766 9999).

Tiresias is the RNIB’s scientific research unit. Its website is also informative at www.tiresias.org/index.htm

An American Site, the Job Accomodation Network, has a factsheet, “Worksite accomodation ideas for individuals with vision impairments” at www.jan.wvu.edu/media/sight.html

Ability Net is a charity providing free information and advice on computer technology for people with disabilities. Tel: Freephone 0800 269545 (if you call from home) or 01926 312847 (if you call from work) and website: www.abilitynet.org.uk

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