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## Introduction

This guide is intended to help employees understand the legal framework and practical implications of the Disability Discrimination Act (DDA), and understand their rights and responsibilities – as well as those of HEFCW itself – under the legislation. It also details what support is available for employees regardless of whether their condition arises from a physical disability, sensory impairment, mental health difficulty or any other cause.

This document should be read in conjunction with HEFCW's Equality Scheme, our Equality & Diversity Policy and our Fair Treatment and Dignity at Work Policy. All of these policies can be found on HEFCW's intranet site.

## Legislative background

The Disability Discrimination Act (DDA) 1995, amended by the Disability Discrimination Act 2005, places a statutory General Duty (sometimes referred to as the Disability Equality Duty) on all public authorities to promote disability equality. This means that public authorities must, in carrying out all functions, have due regard to the need to:

- promote equality of opportunity between disabled individuals and other individuals;
- eliminate discrimination that is unlawful under the Act;
- eliminate harassment of disabled individuals that is related to their disabilities;
- promote positive attitudes towards disabled individuals;
- encourage participation by disabled individuals in public life; and
- take steps to take account of disabled individuals' disabilities, even where that involves treating disabled individuals more favourably than other individuals.

We recognise that promoting disability equality will improve services for all. Our aim is to make equality a central part of the way HEFCW works by putting it at the centre of our activities. HEFCW subscribes to the social model of disability which recognises that the poverty, disadvantage and social exclusion experienced by many disabled individuals is not the inevitable result of their impairments or medical conditions, but rather stems from attitudinal or environmental barriers<sup>1</sup>.

As an employer, HEFCW has a duty to make 'reasonable adjustments' in order to ensure that a disabled applicant or employee is not put at a substantial disadvantage by any physical feature of the premises, or by any provision, criteria or practice we have. Failure to make reasonable adjustments could be deemed unlawful under the DDA.

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<sup>1</sup> Disability Equality Statutory Code of Practice, Disability Rights Commission (DRC), p. 14.

Although neither of the lists below are exhaustive, here are a few examples of reasonable adjustments:

- making modifications/adjustments to premises;
- modifying procedures for testing or assessment;
- giving or arranging training or mentoring;
- acquiring or modifying equipment;
- modifying an existing policy or procedure;
- providing a reader or interpreter;
- providing supervision or other support;
- allocating some of the disabled individual's duties to another individual;
- allowing absence during working hours for rehabilitation, assessment or treatment;
- altering working hours;
- assigning the disabled individual to a different place of work.

HEFCW will also need to consider:

- how effective the adjustment is in preventing the disadvantage;
- how practical it is;
- its financial and other costs;
- how disruptive the adjustment may be e.g. relocating a team;
- the availability of financial or other assistance to help make an adjustment.

Refer to the DDA Code of Practice for Employment or visit the Equality and Human Rights Commission website ([www.equalityhumanrights.com](http://www.equalityhumanrights.com)) for further guidance.

## **Disability defined**

The DDA defines a disability as:

"a physical or mental impairment which has a substantial and long-term adverse effect on the ability to carry out normal day-to-day activities."

**Physical impairment:** covers a number of conditions affecting the body such as sight and hearing impairments, arthritis, back injury, cerebral palsy, cancer, chronic fatigue syndrome, diabetes, epilepsy, HIV, muscular dystrophy, multiple sclerosis and many other conditions.

**Mental impairment:** covers learning disabilities / difficulties such as dyslexia, dyspraxia, autism and Asperger's Syndrome, and mental health issues such as anxiety, depression and schizophrenia.

**Substantial:** means not minor and will make it more difficult and time consuming for an individual to carry out an activity compared to someone without the impairment.

**Long term:** means that the condition must last, or be likely to last, for more than 12 months.

**Normal day to day activities:** includes mobility, dexterity, co-ordination, hearing, sight, memory, concentration and perception of the risk of physical danger.

The definition also applies to individuals who have had a disability in the past and previously met the above criteria, but no longer experience the effects of the impairment. This can also apply to certain medical conditions where symptoms can be controlled by medication and treatment, where surgery has removed the impairment, or when the condition is in remission, e.g. cancer.

*Source: Promote Disability Equality: Statutory Code of Practice for England & Wales*

## **Getting a diagnosis**

If an employee feels that they may need support or adjustments at work – including adjustments to policies – due to a disability or medical condition, the first step is to obtain medical evidence. This involves confirming your diagnosis through HEFCW's Occupational Health providers (for more details on Occupational Health, please see page 10), which HR will arrange for you. This may also involve further assessment(s) with a specialist. Occupational Health are only able to re request medical reports with the signed consent of the individual concerned.

Any evidence given to HR is kept in the strictest confidence and will not be shared with any other employee without your consent.

## **Confidentiality and disclosure**

Disclosure of any personal information will be handled with due sensitivity and with regard to preserving confidentiality. Information regarding an individual's disability is classed as personal and sensitive under the Data Protection Act and even if you choose to disclose your condition to HR, any private information about you will not be shared elsewhere without your prior consent. Disability status (whether or not an individual has a disability) is indicated on the HR database where all information stored remains confidential.

It is important for HEFCW to promote positive attitudes towards disability and to create a culture in which disabled individuals feel comfortable and confident about disclosure.

## **Becoming disabled whilst working at HEFCW**

Employees are within their rights to choose not to disclose a disability. However, it is extremely difficult to provide support if an employee has not disclosed their disability to us and we are not aware of individual circumstances. Should an employee develop a disability it may take some time before adjustments have been fully identified, are suitable to the individual and are appropriate. The employee will be involved at all

times in discussions and decisions relating to their work situation and individual differences will be acknowledged, whilst avoiding assumptions about what an individual can and cannot do.

Becoming disabled can be a difficult time of re-adjustment and can cause uncertainty, insecurity and loss of confidence. All those involved should take a flexible and supportive approach to the situation. Time off may be required to attend medical appointments or rehabilitation. If an employee is on sick or disability leave, it is important that regular contact is maintained by both the employee and HEFCW. The employee is expected to participate fully in this process.

Should an employee develop a serious physical illness, for example cancer, HR may be aware through the sickness absence procedure. Initially your needs will be managed by and line manager. The employee and their line manager will be advised on such issues as a phased return to work and adjustments recommended by Occupational Health.

### **Deterioration of condition**

Some individuals may have always managed their disability and working life well, or perhaps never before considered themselves to be disabled. But as the effects of disability can fluctuate, and roles change, we understand that some progressive conditions may necessitate a change in some individuals' working situation.

It may be helpful to meet regularly with HR during this transitional period to address any issues and advise on action required. If a medical condition or disability has not yet been disclosed, please contact HR for advice, support or further referral.

### **Support**

Support for employees that require specialist or personal care is discussed and agreed on an individual basis. This can range from interpreters and communicators to mentors, scribes and readers.

There are a range of technological aids that can help with a wide-range of disabilities and conditions, including specialist ergonomic equipment (adapted chairs, keyboards, mice, screens, furniture etc.) to specialist software (e.g. dedicated programs to assist with dyslexia, screen readers/magnifiers for visually impaired employees). As technological needs differ from condition to condition, and affect individuals differently according to their role within HEFCW, the employee will be required to undergo an individual assessment with Occupational Health or appropriate specialist to ensure the correct equipment is obtained.

As part of our on-going commitment to equality of opportunity HEFCW is able to provide all key HEFCW documents in alternative formats such as; Braille, audio, electronic communication, and, domunication support for British Sign Language users can also be arranged on an individual basis.

## **Reasonable adjustments**

These guidelines have been developed to enable an employee to formally request a reasonable adjustment under the Disability Discrimination Act.

The request form and completion guidance notes can be found [here](#).

This form is to be completed by the employee following a discussion with HR. To ensure HEFCW is able to provide the necessary support it is advisable that the employee also makes their line manager aware of any such issues as it is extremely difficult for a line manager to provide support if they are not aware of individual circumstances. The employee may request support from HR and or the line manager to complete the form.

## **Managing absence**

It is considered a reasonable adjustment under the DDA to allow absence during working hours for rehabilitation, assessment or treatment for a disabled employee. This should be considered carefully on an individual basis and the individual's line manager should discuss this with HR, in order to come to an agreement of what is reasonable, based on advice provided by Occupational Health (where appropriate). This type of leave would ultimately be agreed on a discretionary basis with the employee's line manager wherever possible and would be recorded separately to that of sickness absence. Similarly, if a disabled employee is absent from work because he/she is waiting for reasonable adjustments to be made, then this will also not be counted as sickness absence. This commencement of this absence would depend on individual circumstances and, where appropriate, specialist advice. Where HEFCW is unaware of an employee's disability, it can only be recorded as sickness absence.

## **Health and Safety**

Although there may be genuine concerns about the health and safety implications of employing an individual with a disability, occasions where health and safety issues present an insurmountable obstacle to the employment of a disabled individual are very few. These should be considered within the context of a routine risk assessment. It is also considered good practice (although not a mandatory requirement) under Health and Safety legislation to do individual risk assessments for disabled employees. It is often the case that where reasonable adjustments are made, health and safety risks can be reduced.

Where an employee may have difficulties in evacuating a building in the event of a fire, information and advice must be sought from the Office Manager, who will develop an exit plan with the individual.

## **Occupational health**

HEFCW has in place an occupational health provider in order to help support employees and the organisation to:

- manage and reduce absence at work;
- inform our policies on absence and stress management;
- obtain medical reports that will provide HEFCW with greater details of individual's circumstances.

This in turn will enable HEFCW to make decisions about the management of sickness absence and to help us to make informed decisions about the appropriate course of action.

Referrals may be made at any time for employees who may be identified as being at risk from work related causes. These may be identified through workplace assessments or through a concern being identified.

Occupational Health will also advise HEFCW on any return to work strategies (e.g. phased return) for employees who have been on long term sickness absence.

## **Further support**

HEFCW is committed to meeting our statutory employment duties, following best practise and developing our policies and procedures to ensure the equality of opportunity for all employees. These include; HEFCW's Equality Scheme, Equality and Diversity Policy, Code of Practice on Equalities and Fair Treatment and Dignity at Work policy, all of which are regularly reviewed and revised.

HEFCW endeavours to provide a working environment that is safe, friendly and welcoming. In addition to our Fair Treatment and Dignity at Work policy, HEFCW also provides employees access to Fair Treatment Advisers. Further details are available on the intranet

## **Employee Assistance Programme (EAP) Service**

HEFCW also provides all employees and their families with access to the EAP, a service that provides either telephone-based information or short-term telephone or face-to-face counselling support. The EAP can provide support on a wide range of work and personal issues.

Further details are available on the intranet.

## Acronyms and Abbreviations

AIP	Accessible Information Policy
BSL	British Sign Language
EHRC	Equality and Human Rights Commission
DAISY	Digital Accessible Information System
DDA	Disability Discrimination Act
DED	Disability Equality Duty
DES	Disability Equality Scheme
DRC	Disability Rights Commission
ECU	Equality Challenge Unit
FoI	Freedom of Information Act
HEFCW	Higher Education Funding Council for Wales
HR	Human Resources
ICT	Information and Communications Technology
WAG	Welsh Assembly Government