



Disability



A. EXTENT OF DISCRIMINATION

In general, disabled people are disadvantaged in the workforce. Labour Force Survey (LFS) figures show that there are 6.8 million disabled people of working age in Britain, representing 1 in 5 of the working population.

- Only 51 % of disabled people of working age are in employment compared to 81 % of non-disabled people
- People with mental health problems have the lowest employment rate of all disabled people of working age, at only 21 %, and only 26 % of people with learning difficulties are employed
- Nearly 1 million disabled people who do not have a job want to work
- The average gross hourly pay of disabled workers is 10 % less than that of nondisabled people
- The employment rate for people with mental health problems rose from 15 % in 1998 to just 20 % in 2005, despite evidence that 60 % of people with mental health problems could work.
- Disability increases with age – one third of people from age 50 to retirement are disabled, compared with 10 % of people aged 16-24
- Many disabled people who do work find that they are confined to jobs for which they are over-qualified and have no hope of progressing
- 27 % of disabled workers say they have been insulted or had offensive remarks made about them, 25 % report they have experienced intimidating behaviour from people at work, and 12 % have suffered actual physical violence at work
- Of all children living in poverty, one in three has at least one disabled parent

B. ARGUING FOR EQUALITY

During the course of their work, physiotherapists encounter many disabled people: patients and colleagues. Many people consider disability to be an illness: a medical condition requiring a 'cure' by an 'expert'. This represents the medical

model, a perspective that is often adopted by professionals whose preoccupation is with 'health' and 'normality'. Individuals are expected to aspire to 'normality' and, where this is not possible, are required to 'adjust' to their disability and to 'cope' within their environment.

For many disabled people, however, the reality is that disability is caused, not by an individual's impairment but by the numerous physical, social, environmental and financial barriers encountered during the course of everyday life. This social model of disability draws upon the concepts of 'empowerment' and 'inclusion' and emphasizes society's responsibility in working towards the creation of a barrier-free world in which everyone, regardless of their impairment, can fully participate.

Physiotherapy is sometimes characterised as a highly restricted profession in terms of its scope of practice. It can be associated with the treatment of mainly musculo-skeletal injuries by healthy, young professionals whose chief preoccupation is with personal fitness and sporting activities. It is sometimes assumed that physiotherapists with any kind of significant physical impairment would find much of the work difficult if not impossible to carry out and therefore could not participate fully in the profession. Or to the contrary that a therapist with a non-physical impairment would have no difficulties in fully participating in the profession.

It is wrong to assume, however, that disabled therapists must do everything that non-disabled therapists do. There is in fact a broad range of practice that physiotherapists can choose to specialise in. Physiotherapy is a very flexible occupation encompassing many clinical specialities as well as management, education and research.

It is also important to remember that becoming disabled or developing a long-term health condition does not necessarily mean the end of a physiotherapy career. Not only do employers have a duty to provide reasonable adjustments under the Equality Act (or its Northern Ireland equivalent) but they are often also keen to retain the knowledge and experience that members of staff have. Please also note that if a disability is the result of a work injury an individual may qualify for ill-health retirement under the NHS Pension Scheme, or be entitled to a payment under the NHS Injury Allowance Scheme. Members in this

situation should speak to their steward in the first instance and refer to CSP Information Paper 12 on Industrial Injuries.

C. ACCESS TO WORK

The Access to Work (AtW) scheme is a Government scheme administered through the Jobcentre Plus network. It was set up to provide financial assistance and practical help to overcome the barriers that disabled people face at work. It aims to improve the opportunities of disabled people in finding and keeping a job, and does this by funding some or all of the additional costs that employers may have when employing a disabled person.

There is a similar scheme in operation in Northern Ireland: Access to Work (NI): www.nidirect.gov.uk/articles/access-work-practical-help-work

Who can get assistance?

To get help from Access to Work you must:

- have a disability or health condition (physical or mental) that makes it hard for you to do parts of your job or get to and from work
- be 16 or over
- live in England, Scotland or Wales (or Northern Ireland to access the Northern Ireland scheme).

You need to have a paid job, or be about to start or return to one. A paid job could include:

- self-employment
- an apprenticeship
- a work trial or work experience
- an internship

Your disability or health condition may not have a big effect on what you do each day but may have a long-term effect on how effortful or how well you can do your job.

Is the assistance for the disabled person or the employer?

Both. The scheme helps employers to meet their obligations under the law by funding or part-funding the cost of adjustments that it would not be reasonable to expect the employer to pay.

The scheme is however targeted towards disabled people and should be designed to meet the needs of individuals. Jobcentre Plus views the disabled person, not the employer, as being the customer/client.

How do people apply for assistance?

The disabled member or the employer will need to contact Access to Work via the DWP's online portal (www.gov.uk/access-to-work/apply) or by phone (0800 169 0155).

In Northern Ireland, the Access to Work (NI) scheme is run by the Department for Communities: www.nidirect.gov.uk/articles/access-work-practical-help-work.

What kinds of equipment and services are available from Access to Work?

Examples include:

- Additional training for your team or personalised coaching to develop strategies
- Equipment that has been specifically designed for people with certain types of impairment, e.g. computer software, wheelchairs, seating, etc.
- Adaptations to premises and equipment
- Support workers
- Financial assistance with fares to work, for example if taxis are needed to travel to and from work because of a lack of accessible public transport

- Personal reader services for people who require assistance with accessing information – although this is more appropriately described as “support worker”
- Sign language interpreter services

Access to Work also offers mental health support, through two providers, Remploy and Able Futures.

Further information about the Access to Work scheme is available from www.gov.uk/access-to-work.

D. EQUALITY ACT 2010

This section provides a brief guide to

- 1 Who is covered by the Equality Act 2010 (and the equivalent regulations in Northern Ireland)
- 2 What the legal duties are for employers
- 3 What the legal duties are for trade unions

Introduction

Part 1 describes who would be defined as “disabled” according to the Act. Part 2 sets out the legal duties for those who employ disabled people. The Equality and Human Rights Commission produced a statutory Code of Practice, Code of Practice: Employment and Occupation, that explains the application of the law, and Employment Tribunals can refer to this. It is available at www.equalityhumanrights.com.

The TUC has also provided guidance in its publication Disability and Work: a trade union guide to the law and best practice. www.tuc.org.uk.

The Equality Act 2010 applies in England, Scotland and Wales. In Northern Ireland, equality law has not yet been brought together under one single Act. Instead, it is spread across several sets of regulations. Details are available from the website of the Northern Ireland Equality Commission at: <https://www.equalityni.org/Legislation>.

The laws that protect disabled workers in Northern Ireland are weaker in some important respects than the equivalent legislation in the rest of the UK. For example, you cannot claim for “discrimination arising from disability”, or “indirect disability discrimination” in Northern Ireland.

The definition of “disability” is also different. In Northern Ireland, an impairment will only be a disability if it affects one of a list of “day to day activities”. This list of activities was removed in the rest of the UK by the Equality Act 2010.

These differences make it especially important that disabled members in Northern Ireland obtain early expert advice to ensure that they frame their complaint in the way that best supports their legal right to protection from disability discrimination at work.

The Equality Act 2010 says that you must not be discriminated against because:

- you have a disability
- someone thinks you have a disability (this is known as discrimination by perception)
- you are connected to someone with a disability (this is known as discrimination by association)

It is not unlawful discrimination to treat a disabled person more favourably than a non-disabled person.

Who is covered?

In respect of employment the legislation applies to workers regardless of their length of service or their working hours. It applies to all stages of the employment relationship and can apply to discrimination after employment has ended, e.g. it prohibits employers from refusing to give a reference on the grounds of disability. Equally, a job applicant can make a claim to an Employment Tribunal (ET) – it is not necessary for them to have been employed by the organisation to make a claim of discrimination under the Equality Act 2010.

[N.B. All claims to an ET must be submitted no later than 3 months less one day from the date on which the alleged act of discrimination took place. The first (compulsory) step for any ET claim is to send an

Acas Early Conciliation (EC) Notification Form to Acas. This step must be taken before the expiry of the claim deadline. Otherwise the claim is likely to be dismissed. There is information about Acas EC on the Acas website at www.acas.org.uk/early-conciliation]. The equivalent body in Northern Ireland is the Labour Relations Agency: www.lra.org.uk/early-conciliation.

- 1 Who is covered by the Equality Act 2010
- 2 What the legal duties are for employers
- 3 What the legal duties are for trade unions

Definition of disability

What is classed as a disability?

In the Equality Act a disability means “a physical or a mental condition which has a substantial and long-term impact on your ability to do normal day to day activities”.

HIV, cancer, multiple sclerosis are all automatically covered by the Equality Act,. You are protected as soon as you are diagnosed with one of these conditions. Blindness and partial sight (unless it can be corrected by wearing spectacles or contact lenses) and severe disfigurement (except tattoos and body piercings) are also covered.

You are also covered by the Equality Act if you had a disability in the past. For example, if you had a mental health condition in the past which lasted for over 12 months, but you have now recovered, you are still protected from discrimination because of that disability.

An example of a mental impairment could be a mental health condition such as depression or a neurodevelopmental condition such as ADHD or dyslexia. However, an impairment does not have to be a diagnosed condition.

Substantial means:

- more than minor or trivial

Long-term means:

- has lasted 12 months,
- is likely to last 12 months from the outset,

Or

- will last for the rest of the person's life

Someone who has a progressive condition (such as diabetes or motor neurone disease) will be protected by the Equality Act as soon as there is any evidence that their condition impacts – even in a minor way - on their ability to carry out normal day-to-day activities, as long as that negative impact is likely to increase as the condition worsens.

The phrase “normal day-to-day activities” does not have a specific meaning. In England, Scotland and Wales (unlike in Northern Ireland) there is no longer a list of “normal day-to-day activities” that must be impeded in order for an impairment to be a disability under the Equality Act.

It is important to recognise that many people who are likely to have rights under the Equality Act may not wish to identify themselves using the term “disabled person”, and may be reluctant to disclose their disability to their employer or potential employer. This could be because they fear the consequences of using this label about themselves, which could be due to previous negative experiences of being on the receiving end of stereotypical responses.

Alternatively, they may simply not regard themselves as “disabled”. It is important that CSP stewards make their members aware that they have a right to protection under the Equality Act if their condition qualifies them under the definition, and that they are likely to lose this protection if their employer does not know about their disability.

Employers' duties Under the Equality Act

In relation to employment, employers have a duty not to discriminate against disabled people in the following areas:

- In the recruitment process
- In their terms and conditions of employment
- In chances for promotion, transfer, training and other benefits
- By not dismissing them unfairly
- By not treating them less favourably than other workers

- By not subjecting them to harassment or other detriment

There are six main types of discrimination:

- direct discrimination
- indirect discrimination
- failure to make reasonable adjustments
- discrimination arising from disability
- harassment
- victimisation

1. Direct discrimination

This is treating someone less favourably just because they have a disability. Direct discrimination cannot be justified in law.

EXAMPLE: An NHS Trust is selecting a candidate to appoint for the post as physiotherapy manager in a busy department. There are a number of candidates who have similar levels of qualification and experience, however one of these candidates has a history of depression, which they have declared. The employer decides not to employ that person because an assumption is made that it would be too stressful for them to take up a demanding role. This is likely to amount to direct discrimination because the employer is making the decision not to recruit based (solely) upon the person's disability. They are making assumptions about them that they would not make about a nondisabled person.

2. Indirect discrimination

This happens when a policy or way of working has a worse impact on disabled people than those who do not have a disability. This is unlawful unless the organisation is able to prove that there is a good reason for the policy and it is a proportionate measure to take to achieve that outcome – it is an objective justification.

EXAMPLE: a private physiotherapy practice states that all applicants must have a driving license. This puts some disabled people at a disadvantage as some disabilities exclude individuals from driving (e.g. epilepsy). If the advert is for a driving role, the requirement is proportionate, if it is for a clinical physiotherapy role it would not be.

It is not possible to claim for indirect disability discrimination in Northern Ireland.

3. Failure to make reasonable adjustments

Under the Equality Act, employers have a duty to make reasonable adjustments for disabled job applicants and for disabled employees to enable them to effectively execute their current role or progress through the organisation. An employer only has a duty to make reasonable adjustments if they know (or ought to know) that the person has a disability.

An employer cannot justify a failure to comply with the duty to make reasonable adjustments.

EXAMPLE: Following a service reorganisation, a physiotherapist who is unable to drive because of her disability applies for a job working in the community. Her application is not considered because she does not have a driving license, which is a prerequisite for the job. An employer cannot justify a failure to comply with the duty to make reasonable adjustments, for example

to consider allowing the individual to use taxis, for which there may be funding available through Access to Work.

4. Discrimination arising from disability

The Equality Act protects people from discrimination arising from disability. This protects people from being treated badly because of something connected to their disability, such as having an assistance dog. For this type of discrimination to occur, the employer must know, or be reasonably expected to know, that the disabled person has a disability. The exception would be if the employer can demonstrate that there is a good reason for the difference in treatment and that it is a proportionate measure (objective justification, as above).

EXAMPLE: An employee develops a visual impairment and can no longer operate a computer without assistive technology. The employer makes an adjustment by providing a Braille keyboard, but the firm's computer system is not compatible with assistive software. The employee is dismissed because she cannot do as much work as a non-disabled colleague. If the employer sought to justify the dismissal, he would need to show that it was a proportionate means of achieving a

legitimate aim, and that there were no other reasonable steps to take that could have avoided the dismissal.

Equality law does not protect employees in Northern Ireland from discrimination “arising from” disability. A member would normally have to base this kind of claim on the employer’s duty to make reasonable adjustments.

5. Harassment

The Equality Act says that harassment of disabled people is unlawful. Harassment can happen when another person talks or behaves in a way that:

- Violates the disabled person’s dignity, or
- Creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

EXAMPLE: Colleagues often refer to a member of staff with dyslexia in a joking manner, as “dozy”, “dizzy” and “slow”. Regardless of whether the colleagues may or may not have intended any offence, the individual feels that these remarks erode his self-confidence and make him feel nervous about the work environment. The conduct of the disabled person’s colleagues is likely to amount to harassment and employers would have a duty to take swift action to stop it happening.

6. Victimisation

This has a different meaning from that used in everyday language, and is not necessarily about bullying and harassment. It means in this context to treat someone less favourably because they have started or taken part in legal proceedings under the Equality Act or have alleged in good faith that someone could be in breach of the Act. Victimisation is unlawful under the terms of the Equality Act.

EXAMPLE: An employee takes their employer to an Employment Tribunal (ET) claiming disability discrimination because she believes she has been discriminated against. The disabled employee seeks the support of a colleague who knows about the case. The colleague attends the tribunal hearing and gives evidence in support of the disabled person’s case, in good faith. After the hearing, the employer brands the colleague “a trouble-maker” and tries to undermine him because he gave evidence against the employer. This would be unlawful victimisation.

The Equality Act also protects against certain other situations.

For example, employers may not ask job applicants questions about their health or disability until they have been offered a job. There are some important exceptions to the ban. For example:

- An employer can ask about any reasonable adjustments that are needed to the application and interview process.
- An employer can ask questions about health conditions that are intrinsic to the role (after making reasonable adjustments), for example, the ability to see properly if you are applying for a job as an airline pilot.

This ban on asking job applicants pre-employment questions about their health or disability is not in place in Northern Ireland.

Trade union duties under the Equality Act

Trade unions have duties, too, under the Equality Act, both to the staff they employ and also to their members.

A union must ensure that it does not discriminate against disabled people

- In its decisions as to who may become a member
- In the terms of membership offered
- By refusing to accept, or deliberately not accepting, an application for membership from a disabled person
- In the way it provides any training, services or benefits to disabled union members

Unions are required to make reasonable adjustments for their disabled members – please refer to the stewards' checklist.

Time limits

Occasionally, it may be necessary to take a claim to an Employment Tribunal (ET). Claims must be lodged with the ET no later than 3 months minus one day after the act of discrimination that is the source of complaint.

The first (compulsory) step is to submit an Acas Early Conciliation (EC) Notification Form to Acas. This step must be taken before the tribunal claim deadline expires or else the claim is likely to be dismissed. There is information about Acas EC on the Acas website. The equivalent body in Northern Ireland is the Labour Relations Agency: www.lra.org.uk/early-conciliation.

Please speak to your Senior Negotiating Officer as soon as possible if you think you have an ET claim.

E. DISABILITY EQUALITY DUTY

In April 2011 the public sector equality duty came into force, replacing the previous race, disability, and gender equality duties. It requires all public authorities to meet both a “general” duty and a number of “specific” duties.

The duty means that public bodies must plan their practices and services so that they deliver equality for all disabled people. Under this approach, institutional discrimination can be challenged so that both present and future disabled workers or service users find that barriers have been removed before they encounter them.

The general duty requires public bodies (including NHS Trusts/Boards) or those carrying out work of a public nature to:

- Promote equality of opportunity between disabled persons and other persons
- Eliminate discrimination, harassment and victimisation and other conduct that is unlawful under the Act
- Promote good relations between people who have a disability and those who do not.
- Remove or minimise disadvantages suffered by people with disabilities due to their protected characteristics.
- Take steps to meet the needs of people with disabilities where these are different from the needs of other people.

- Encourage people with disabilities to participate in public life or in other activities where their participation is disproportionately low.

In England, the specific duties require public bodies to:

- publish information to show their compliance with the public sector equality duty in relation to disability at least annually; and
- set and publish equality objectives, at least every four years.

The specific duties that are imposed under the public sector equality duty are different in England, Scotland, Wales and Northern Ireland.

Further details are available on the EHRC website at: **www.**

equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty

CSP stewards can help improve the experience for disabled people within their workplaces by promoting disability issues within their NHS Trusts/ Boards and thereby helping to move their employers towards a genuine identification with the goal of disability equality.

Checklist for stewards

- Find out if your Trust has any Equality schemes in place for disabled members of staff, and that Equality Impact Assessments (EIAs) are being carried out on all policies and procedures
- Ensure that managers are aware of Access to Work, and that equality issues are on the agenda at all Joint Negotiating Committee meetings
- Check all Trust policies to ensure that they do not discriminate against disabled staff and if they need revising raise at the Joint Negotiating Committee
- Make sure that you are familiar with the requirement for unions to make reasonable adjustments for disabled members, e.g. meetings, dealing with personal cases
- Ask the individual member what their needs and preferences are
- Make adjustments to times and venues of meetings, case conferences or other meetings if necessary

- When dealing with personal cases, where possible allow extended appointment times if needed
- Make accessible information available well in advance
- Encourage the member to take breaks in meetings where required
- Enable advocates/friends to be present at meetings
- Ensure that meetings are either recorded or provide written minutes/notes afterwards
- Produce documents/papers in different formats
- Be prepared to travel to the member in some cases if the journey is difficult or the person has issues with mobility
- If you think you may have an ET case, be aware of time limits and discuss with your SNO at the outset
- Make sure your members are aware of the CSP DisAbility network and how to join
- Discuss with your manager carrying out awareness raising exercises in this pack at staff meetings

Checklist for managers

- Do not assume that people with learning disabilities or mental health problems cannot be valuable employees, or that they can only do low status jobs
- Consult with each individual –they are the experts on their experience and on what they need
- Do not assume that because a disabled person may have less (paid) employment experience than a non-disabled person, they have less to offer
- Ensure that disability equality training is provided to staff, so that they understand their obligations under employer policy, legislation and the practice of reasonable adjustments
- Ensure that training opportunities are available for disabled staff
- Make use of the expertise and knowledge of relevant external organisations

- Monitor the implementation and effectiveness of your policy
- Inform all staff that conduct which breaches the policy will not be tolerated and respond quickly and effectively to any such breaches
- Be prepared to deal with acts of disability discrimination by employees under disciplinary rules and procedures
- Are you aware of Access to Work and how to access funding?
- Are you aware that staff with carer responsibilities for disabled people are also protected under the Equality Act 2010?
- Encourage disabled staff to join the CSP DisAbility Network and if possible allow study leave to attend the biannual meetings

F. EXERCISE FOR WORKPLACE MEETINGS

The following case study is designed to help you initiate discussion at a staff meeting. The purpose is to raise awareness of the issues facing disabled members, of their rights and how members can support them.

CASE STUDY: Stephen is a newly qualified physiotherapist who has just started his first Band 5 post at your trust. He is struggling to keep up with his workload of patients, particularly his notes. His manager has already spoken to him about this a few times and has warned him that unless he improves his performance she will be forced to take formal action.

Stephen has dyslexia but when he applied for this post he decided not to mention it because he thought it would count against him and given the high competition for newly qualified Band 5 posts he did not want to run this risk. When he was at university and on clinical placements he had lots of support and was able to perform well. However, in his new post he is finding it very difficult to see the same number of patients as his Band 5 colleagues mainly because of the time it takes to write up patient

notes and carry out initial assessments. He does not know whether to tell his manager about his dyslexia or what support could be made available.

What impact could this situation have on other staff?

What support do you think could be made available for Stephen?

