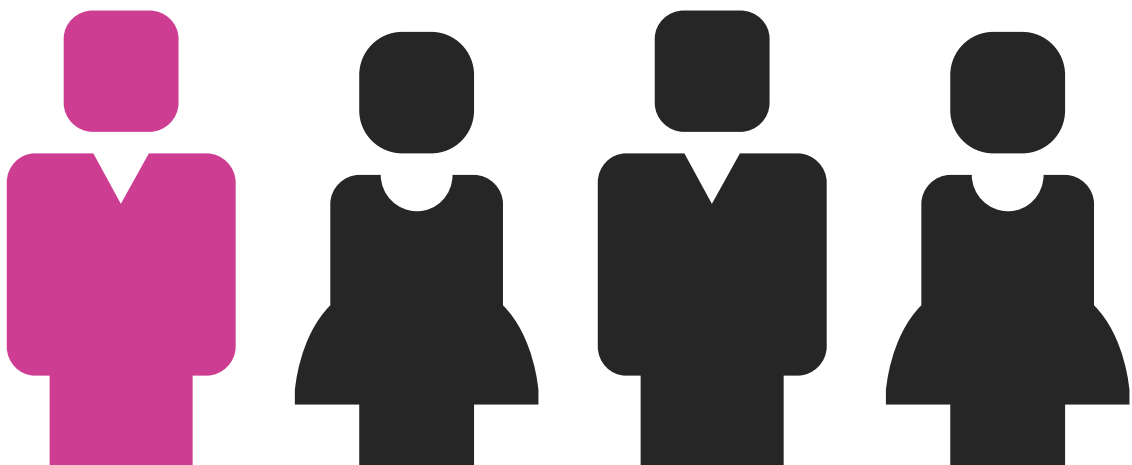


One in Four

A UCU BRIEFING ON MENTAL HEALTH AT WORK





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Introduction

This briefing document arose as part of the work of the UCU Disabled Members Standing Committee. It is intended to assist branches in supporting members who may need mental health support and seeks to offer practical advice and guidance for branch representatives including health and safety representatives. We aim also to challenge taboos and myths surrounding this area so that individual members are supported appropriately whilst also promoting good mental health and wellbeing in the workplace.

Individuals needing mental health support will face their own unique challenges and many may need little or no changes to their working environment. However, understanding their needs and being able to advise and support members is paramount to ensuring that the stigma, stereotypes and discrimination associated with mental health are addressed.

The term mental health issues describes all mental disorders or illnesses that meet generally accepted criteria for clinical diagnosis, treatment or interventions. They include conditions such as depression and anxiety, as well as less common ones such as schizophrenia or bipolar disorder. Throughout this briefing the term branch representatives is used to encompass all roles of a branch including health & safety and equality reps.



The preferred term of the Disabled Members' Standing Committee used in this guidance is Mental Health Support. It is used to encompass individuals experiencing mental ill-health and those requiring support.

The terminology used is by no way a definition of what constitutes mental ill health and mental health support needs vary between individuals and at different times. We welcome your comments on finding an appropriate term to be used.

The Mental Health Foundation has produced information on the different terminology used to describe individuals requiring mental health support:

<http://www.mentalhealth.org.uk/information/mental-health-a-z/terminology/>



One in four people will experience some kind of mental health condition in the course of a year

Research shows that there is an increase in mental illnesses during periods of recession and people are less likely to disclose their mental illness during the interview process for fear of being discriminated against

Mental health issues in the workplace







Research conducted by YouGov on behalf of MIND¹ in August 2009 found that 92 per cent of the British public believes that admitting to having a mental health illness would damage their career. It found that the three careers most likely to be affected are:

Doctors	56%
Emergency services	54%
Teachers	48%

The research also showed that there was an increase in mental illnesses during periods of recession and people were less likely to disclose their mental illness during the interview process for fear of being discriminated against.

External factors can affect each and every one of us in different ways, and how we deal with these will differ from person to person. In order to address these issues we need to understand the effect on those who require mental health support.

Affects can range from mild cases of stress, sleep deprivation, anxiety and fatigue to severe cases of depression, bipolar disorder or schizophrenia. Statistics show:

-  Mixed anxiety and depression is the most common mental disorder in Britain.
-  Women are more likely to have been treated for a mental health problem than men.
-  About 10 per cent of children have a mental health problem at any one time.
-  Depression affects one in five older people living in the community and two in five living in care homes
-  British men are three times as likely as British women to die by suicide.
-  The UK has one of the highest rates of self harm in Europe, at 400 per 100,000 population.

Employers and employees alike may lack knowledge or draw the wrong conclusions about health conditions or disability and their effect on someone's capability to work. This is often the case for anyone needing or receiving mental health support although many people who experience ongoing mental health issues can work effectively with little or no support.

The Commission for Disabled Staff in Lifelong Learning highlighted in their 2008 report, *From compliance to culture change: Disabled staff working in lifelong learning*:

¹ MIND is a charity campaigning for better mental health

² Mental Health Foundation give more specific reference



Employers are often unsure how they can support employees with mental health difficulties and what reasonable adjustments can be put into place. This lack of knowledge also means employers and colleagues may make assumptions about mental health difficulties based on stereotypes. Fear of saying or doing the wrong thing, as well as a lack of awareness, may stop employers even broaching the subject of mental health difficulties. Because of this, responsibility for gaining support often lies with the individual, not with the organisation.

Increased work pressures such as excessive workloads, fear of redundancies, working within an environment whereby bullying is endemic, will most certainly impact on members already receiving mental health support

Stigmas and myths

Mental health triggers many misconceptions, stigmas and myths and, for the many individuals with a mental health issue, they will often find themselves treated differently and in some cases being discriminated against when applying for jobs. People with mental health support needs can become isolated from friends and family and unable to fully integrate into society if they do not receive proper support.

The following are examples of perceptions of individuals with mental health issues.




MYTHS	COMMENTS
You brought it on yourself so pull yourself together	There are many different things that can contribute to someone becoming unwell and most are out of an individual's control. It is best not to lay blame but to try to understand the situation and to offer advice and help. A mental illness is not a character flaw. It is an illness and has nothing to do with being weak or lacking will-power.
Mental health problems are for life	While some people may experience problems over a long period, many people may experience a single episode of illness. It is important to know that people can and do recover from mental health issues.
People with mental health problems are weird and different	We are all different. A person with a mental health illness is no different.
People with mental health problems are stupid and weak	Mark Twain, Beethoven... I think we've made our point.
People with mental illness are violent and dangerous	The truth is that, as a group, mentally ill people are no more violent than any other group. In fact, they are far more likely to be the victims of violence than to be violent themselves.



UCU believes that we all have a role to play to ensure that the stigmas and negative stereotypes are challenged. We should encourage direct interaction with members who need mental health support, as it helps prevent discriminatory attitudes and behaviours. To achieve this requires willingness from all, ie the individual themselves, colleagues and managers

We can all play our part in challenging the myths by gaining a better understanding of the topic by speaking with individuals with mental health issues, and by confronting myths and stigmas, thus promoting a better working environment for all.

Discrimination against people who declare themselves to have a mental health issue is still widespread. A research report in *Attitudes to Mental Illness 2010*³, commissioned by the Department of Health, highlighted the following:

-  Almost nine out of ten individuals believe those with psychological problems experience prejudice, with the stigma surrounding such issues being a factor.
-  Respondents were also much less likely to feel comfortable informing an employer of concerns with mental health. This compares with the 69 per cent who admitted they are at ease telling family and friends.
-  More than half (51 per cent) expressed their belief that people suffer 'a lot' of discrimination, while 15 per cent said behaviour of this kind has increased in recent years.

Managing mental health in a climate of uncertainty

Organisations such as MIND and ACAS have highlighted the impact the recession has on people with mental health problems. For individuals with mental ill health (in particular those with bipolar disorder) the impact is even higher. As a result of the disorder, people can be prone, for example to excessive and often impulsive spending – issues such as redundancies can be a trigger as the disorder is centred on the mood of the individual.

The following was reported in *Health and Safety News* Issue number 33, October 2009:

ACAS urges employers to anticipate and manage mental health in the downturn.

ACAS is encouraging UK businesses to prepare for the longer term effects of the recession and implement policies and procedures to help cope with mental health issues in the workplace. In a recently published policy discussion paper, ACAS looks at some of the lessons that can be learnt from tackling workplace stress. It advises business and managers to look at how they can anticipate and identify mental health problems in the workplace and what steps should be taken to respond to them.

Figures published in Policy Paper 8 from the Sainsbury Centre for Medical Health show that mental health problems cost UK organisations around £26 billion each year. The latest unemployment figures also reveal that the total number of unemployed

³ Department of Health survey *Attitudes to Mental Illness 2010*



has now reached 2.47 million, which could have a further adverse impact on employees' wellbeing.

Measuring the impact of the recession on employees' mental wellbeing can be difficult as the stigma associated with mental ill health creates barriers to measuring the true extent of the problem. ACAS is urging organisations to implement effective policies and procedures to help managers deal with the long term impacts of the downturn and safeguard the health and wellbeing of employees. This might include:

Training – to raise awareness of stress and mental health so that line managers in particular can tell if an employee is suffering from additional or excessive pressures

Good interpersonal skills – to help nurture trusting relationships with staff who may be anxious about disclosing their mental health problems

A supportive organisational structure – that guides managers by providing clear policies and procedures for managing mental health



There is help. MIND, one of the leading charities for mental health has teamed up with the MoneySavingExpert.com to produce a very useful document explaining the pitfalls and where to go for assistance. The free guide is called *A Guide to Mental Health & Debt* and can be downloaded from Mind's website at http://www.mind.org.uk/news/4658_debt_and_mental_health

UCU strongly advises that branch representatives' respect the wishes of any member should they choose not to disclose but that they understand the potential consequences – see the section on useful organisations for further assistance

To disclose or not to disclose

The decision whether to disclose a mental health issue or not is a personal and individual one and members should not be requested to disclose any information to their employer if they are not comfortable doing so. Factors such as the organisational culture of the workplace will play a part in whether an individual decides to disclose their mental status to their employer. For example, if the organisation embraces and openly portrays an equality-friendly approach to its work then they may respond well whereas, if the culture is one of intimidation, bullying and harassment, a member may be reluctant to disclose their mental health status to their employer.

Research has shown that stigmas associated with mental health could also be a deciding factor in employment opportunities or how the workforce may treat an individual once employed.

In cases where an individual does decide to disclose information in relation to their mental health, they stand a good chance of the employer making reasonable adjustments under the Equality Act 2010. This is more difficult for members who have chosen not to disclose information.



The Equality Act 2010 (section 6) makes it unlawful to discriminate or harass on the grounds of disability. Section 6 defines disability as a physical or mental impairment

What the law says in relation to redundancies

The law is clear – an employer can decide what selection criteria they wish to use in cases of redundancies. However, the criteria must not be discriminatory. If the criteria and/or the process discriminate on the grounds of sex, race, disability, sexual orientation, religion or belief or age, they can be challenged under the appropriate discrimination legislation as well as under dismissal law.

Taking into account absences related to an individual's disability may also be discriminatory. An employer will need to consider what reasonable adjustments it can make (see reasonable adjustments below) to remove any disadvantage faced by a disabled employee.

However, it is not automatically unlawful to make a disabled employee redundant but employers must have considered reasonable adjustments – including to the redundancy criteria and procedures first.

Legislation




Mental health and well-being in the workplace is covered under the following legislation:

Equality Act 2010

The Equality Act 2010 became law in October 2010 with the purpose of harmonising the existing discrimination law by consolidating separate discrimination legislation into a single Act as well as strengthening and streamlining protection from discrimination.

The Equality Act 2010 (section 6) makes it unlawful to discriminate or harass on the grounds of disability. Section 6 defines disability as a physical or mental impairment. Such impairments must have a substantial adverse effect on a person's ability to carry out normal day-to-day activities and be long-term, meaning that it has lasted at least for a year. But if a person does recover or their impairment can be corrected through medication, they are still protected.

For the purposes of the Act:

-  Substantial means neither minor nor trivial.
-  Long-term means that the effect of the impairment has lasted or is likely to last for at least 12 months (there are special rules covering recurring or fluctuating conditions).
-  Normal day-to-day activities include eating, washing, walking, going shopping etc.



Tribunal hearings have made it clear that paranoid schizophrenia, post-traumatic stress disorder and depression are included.

The Public Sector Equality Duty which is part of the Equality Act (replacing the Disability Equality Duty (DED)) places a duty on all public sector authorities (including colleges and universities) to eliminate discrimination and harassment and to promote disability equality. More information is available on the UCU website.

There is also a new offence of 'discrimination arising from disability'. This occurs where a disabled person is treated unfavourably because of something arising in consequence of their disability (section 15). The Equality and Human Rights Code for the Equality Act gives the following example:

A disabled man who has depression has been at a particular workplace for two years. He has a good attendance record. In recent weeks, however he has become emotional and upset at work for no apparent reason. He has also been repeatedly late for work and has made some mistakes in his work. The worker is disciplined without being given any opportunity to explain that his difficulties arise from a disability and that recently the effects of his depression have worsened. The sudden deterioration in the worker's time-keeping and performance and the change in his behaviour at work should have alerted the employer to the possibility that these were connected to a disability.



It is likely to be reasonable to expect the employer to explore with the worker the reason for changes and whether the difficulties are because of something arising in consequence of a disability.

Additionally in the Equality Act 2010 (section 60), employers can no longer ask about a job applicant's health before the person has accepted the job.

An employer can seek some medical information if it is to establish what reasonable adjustments the individual needs in order to participate in the job assessment process. Once the individual has been offered and accepted the post, the restrictions on an employer seeking medical information are lifted.

Reasonable adjustments in relation to the Equality Act

Once it is established that a person is disabled, the employer is under a duty to make reasonable adjustments to accommodate their disability. Specifically:

-  Where a provision, criterion or practice puts a disabled person at a substantial disadvantage, an employer must take such steps as are reasonable to avoid the substantial disadvantage: section 20(3) of the Equality Act 2010 (EA 10) – for example reallocating duties, altering hours, transferring a newly disabled person (or a person whose disability has worsened) into a more suitable existing vacancy.
-  Where a disabled person would – but for the provision of an auxiliary aid such as adapted telephone or computer equipment, text to speech software, a sign language interpreter – be at a substantial disadvantage, an employer must take

Once it is established that a person is disabled, the employer is under a duty to make reasonable adjustments to accommodate their disability



In most cases employees pose no additional risk to either themselves or others, so it is important unions understand that just because a person requires mental health support they should not assume that a risk assessment must be undertaken

reasonable steps to provide the aid – for example, providing information in an accessible format: section 20(5) of the EA 10.



Where a physical feature (such as steps, emergency escape routes, signs and so on) puts a disabled person at a substantial disadvantage, an employer must take reasonable steps to avoid the disadvantage: section 20(4) of the EA 10 – for example, inviting the disabled worker to work in a ground floor office or from home, modifying a building for a wheelchair user.

Health and Safety at Work Act 1974

The Health and Safety at Work Act 1974 is the primary piece of legislation covering occupational health and safety in the United Kingdom. Under the Act, employers have a duty to ensure, as far as is reasonably practicable, the health, safety and welfare at work of all their employees.

The Health and Safety at Work Act 1974 sets out the general duty of care of employers towards staff and the obligations employers have towards employees and members of the public and that employees have to themselves and to each other.

Management of Health and Safety at Work Regulations 1999: Risk assessments

The regulations place a duty on employers to assess for health and safety risks, including risks to mental health.

TUC advice is that in most cases employees pose no additional risk to either themselves or others, so it is important unions understand that just because a person requires mental health support they should not assume that a risk assessment must be undertaken. This is particularly true if people without the need for mental health support would not be subject to a risk assessment in the same situation.

Stress-related illnesses

The Management of Health and Safety at Work Regulations 1999 require employers to carry out risk assessments. In 2004 the HSE published Management Standards for work-related stress which provides a useful framework for identifying problems - UCU has produced a Stress Toolkit for branches and members.

In addition, Recourse (formerly the College and University Support Network CUSN) offers further counselling in addition to any advice members may receive from their branch representative. See Useful organisations for further details.

The case of Peter Harvey highlighted doubts about whether there was sufficient help available for stressed teachers struggling with disruptive children.

Following a period where he was pushed over by a pupil, knocked into a hedge by another and received a menacing visit at home from another student, Peter Harvey



feared that his classes were 'getting out of control' and that 'he feared he would hurt someone'.

He was advised by the school to seek help and he visited his doctor, who diagnosed severe stress and depression. Peter Harvey's home life was also difficult. His wife also struggled with depression after she left the teaching profession and one of his daughters had Asperger's syndrome.

Having returned to work after being off work for stress for five months, Peter Harvey was made the target of a group of children who 'wanted to know what it would take to make him snap' – the method of choice, mobile phone recording. What followed was an attack by Peter Harvey on a student that resulted in a fractured skull and bleeding to the brain.

Following a trial, Peter Harvey was cleared of attempted murder due to the fact that he was mentally unwell.

Chris Keates, general secretary of NASUWT said 'Employers need to be far more sophisticated in recognising and supporting teachers with mental health problems. The NASUWT will be pressing the Government to look at the whole issue of sickness absence policies and the quality of support teachers are receiving'.



Good practice in assisting a member's return to work includes making reasonable adjustments to assist returning such as a phased return or time off to attend counselling





Read the full NASUWT press release at: <http://bit.ly/9sJ5Ts>

Sickness absence

TUC guidance states that sickness absence management procedures should be flexible and ideally they should:

-  have a provision for allowing people to take disability leave
-  record absence clearly related to a person's disability separately from other sickness absence. Reps should encourage the employer to discount disability-related absence from overall sickness records.

Good practice in assisting a member's return to work includes:

-  keeping in contact with the member, reassuring them that the employer will work to keep the person in their job
-  making reasonable adjustments to assist returning such as a phased return or time off to attend counselling.

Joint Guidance for Disability Equality

UCU has signed up to a new national joint agreement on Guidance for Disability Equality. This agreement is for all FE colleges in England and Wales and has been agreed with the Association of Colleges. It replaces the previous FE agreement on disability equality. Although it is aimed at FE colleges, it could be implemented in higher education institutions with very little amendment.



Branches should contact their regional office for further advice on the implementation of the fit note

As the change is relatively new, it is difficult to say how these changes will impact on members

UCU would like to hear from branches how colleges and universities are implementing the new fit note

This new agreement is groundbreaking as, in addition to outlining employers' statutory responsibilities under the Equality Act 2010, it includes a commitment to the introduction of disability leave and the counting of disability related absence separately to sickness absence.






The 'fit note'

From 6 April 2010, the sick note changed to the 'fit note'. The old sick note stated whether a person should be off sick or was able to return to work, whereas the new fit note states:

- a) whether the person should be off work, or
- b) if they may be fit to do some work if certain changes are made.

The new form has four types of alterations listed which the GP can tick including providing further information on the person's condition and how it may affect what they do.

These are:

-  **A phased return to work:** this is where the employee is suffering from an illness that has left them fatigued or has been away for a long period of time and is not confident about returning full-time. This can also be recommended when an employee has an injury where the doctor believes that their strength has to be built up gradually.
-  **Altered hours:** where the recommendation is that the pattern of working hours is changed, ie avoiding rush hour traffic.
-  **Amended duties:** if the employee cannot fully do their former work but may be able to do their job if some duties are avoided or changed.
-  **Workplace adaptations:** if the GP believes some physical adaptations would help in the return to work, ie change location of workstation if employee is unable to use stairs.
-  **Or other recommendation** that would assist the rehabilitation of the employee.

If the employee is disabled and covered by the Equality Act 2010 the new fit note procedure does not alter the duty on the employer to make adequate adjustments regardless of what a GP recommends.

See the section Further reading for detailed guidance on the new fit note








Branch action

Depending on the severity of the issue/and or the case, UCU will ensure that the health and wellbeing of all branch representatives is addressed by giving the necessary support via UCU regional and national offices.

Practical suggestions to assist members who may need mental health support

In situations where a member has identified that they may need mental health support and have disclosed this to the employer, branch representatives can assist in the negotiation process by asking the employer to make reasonable adjustments such as:

-  **Adjusting working hours:** A member who had difficulty travelling in crowded trains could be allowed to start early and finish early, avoiding the rush hour.
-  **Allowing more frequent breaks than others:** By allowing a member to take breaks when feeling anxious is a simple way of assisting the individual handle their situation better. Branch reps can assist in negotiating a set time and or place to go.
-  **Providing a 'workplace buddy':** A 'buddy' or 'mentor' or someone on a similar grade could be appointed as someone to talk to. A staff member who became particularly anxious could call a friend/support worker for reassurance.
-  **Changing how work duties are performed:** Employers could consider reassigning tasks in agreement with other employees and in some cases additional training to undertake new tasks thus aiding low confidence in dealing with new work. It is important that there is a discussion with the employee about reassigning tasks as they may feel disempowered and, in some cases, a lack of explanation could aggravate an existing condition.
-  **Redeployment into a different role:** If redeploying to another role and/or position, it is important that once there is agreement by all parties, adequate support and training is given to allow individuals to undertake their new role.

All of the above examples require careful negotiations to ensure that other work colleagues are not at a disadvantage and any new arrangement is agreed by all parties.

The role of safety reps

UCU believes that branch safety reps have an important role to play when reviewing safety policies. See section on Impact assessments below.

A number of universities have policies that address the issue of mental ill-health for students and staff. If your existing policies do not mention this, safety reps and/or



The collective approach:
It is important to emphasise that all issues (including any where mental health support is required) should not be seen on a case-by-case basis but rather as a collective issue as there may be actions taken by your branch on the behalf of all members



The impact assessment process involves gathering information to see if a policy and/or practice has any direct or indirect discriminatory elements to it, consulting with relevant stakeholders and then adapting policies and practices as necessary

branch/LA reps are advised to review their policies to include a section on how this will be addressed with the aim of overcoming any negative barriers that may exist.

Any amendment or revision to existing safety and or occupational health policies should include:





-  information regarding training of staff including those with specific responsibilities (ie managers) on managing disability which should give specific examples of behaviour which may indicate a mental health condition
-  disability awareness training for all levels of staff.

Impact assessments

Equality impact assessments are vital checks to ensure that policies and procedures currently in place do not have a disproportionate or adverse impact on any equality group. An impact assessment is the thorough and systematic analysis of a policy and/or practice to ensure it is not discriminating against any particular group. This means that any new or existing policy and/or practice must be analysed in detail.

All branch activists are reminded of the importance of conducting equality impact assessments (EIAs).

An impact assessment is:

-  a tool for delivering equality
-  a key way of ensuring the college/university gives due regard to all aspects of equality
-  part of good policy and service delivery arrangements
-  a positive activity which should identify improvements needed.

The impact assessment process involves gathering information to see if a policy and/or practice has any direct or indirect discriminatory elements to it, consulting with relevant stakeholders and then adapting policies and practices as necessary.

UCU publication: Implementing the Equality Duties gives detailed information on how to conduct equality impact assessments

http://www.ucu.org.uk/media/pdf/r/7/eqduties_tool.pdf



Twelve steps to effective support

Branch representatives are advised to follow these steps when faced with a member who informs them that they are feeling depressed or more stressed than usual:

- 1** Be aware that the member may not recognise that they may need mental health support. They may simply say that they feel stressed or depressed, that they are losing sleep or experiencing mood swings, or have a number of other problems. It may also be that the member is reacting to a recent event, such as the loss of a loved one or the breakup of a long-term relationship.
- 2** Reassure the member that you and the union will support them as much as you can but try to be clear about what the union can or cannot achieve.
- 3** Give the member time to explain things to you in their own way; don't feel that you need to provide instant solutions – sometimes people just need to talk.
- 4** Try to be honest. If you don't know what to say to the member or how to respond, don't pretend you do. Explain that you want to support them, that you will work together, and that you may need to find out more information to help both of you.
- 5** Provide the member with some examples about the sort of reasonable adjustments that might help them to decide how they would like you to discuss the issue with the employer if appropriate.
- 6** Ensure that the member is fully involved in any discussion with the employer in regards to any adjustments to their working environment.
- 7** Have an understanding of requirements of specific legislation as this will help guide and ensure that reasonable adjustments are made.
- 8** Make no assumptions about the effects of the member's condition or their ability to do their job.
- 9** If risk assessments are to be undertaken, it is only to identify what reasonable adjustments can be made to enable the member to do their job.
- 10** Other individuals who are able to support and advise the member should be clearly identified.
- 11** A review mechanism is implemented for any reasonable adjustments made.
- 12** Remember: You are not a trained counsellor. Additional support can be provided by Recourse at <http://recourse.org.uk> or telephone 0808 802 03 04 this service is FREE to all landline users in the UK

UCU does not expect branch reps to identify assess or diagnose the mental wellbeing of any member seeking assistance.

There is however an expectation for you to offer assistance as you would do normally and to signpost where necessary for additional support



Recourse is the new name for College and University Support Network. The charity continues to provide its services, for free and in confidence.

Services include:
24/7 support line (0808 802 03 04),
online support,
web-based info centre,
financial support,
online self assessment tools
and e-newsletter.

Recourse: www.recourse.org.uk

Useful organisations

We have signposted the following organisations as a further source of advice and support.

University and College Union Carlow Street, London NW1 7LH
T: 020 7756 2500 F: 020 7756 2501 W: www.ucu.org.uk

Trades Union Congress, Congress House, Great Russell Street, London WC1B 3LS
T: 020 7636 4030 F: 020 7636 0632 W: www.tuc.org.uk

Scottish TUC, 333 Woodlands Road, Glasgow G3 6NG
T: 0141 337 8100 F: 0141 337 8101 W: www.stuc.org.uk

Wales TUC, Transport House, 1 Cathedral Road, Cardiff CF11 9SD
T: 029 2034 7010 F: 029 2022 1940
W: http://www.tuc.org.uk/tuc/regions_info_wales.cfm

Health and Safety Executive

The HSE has offices located in East, South East, London, Midlands, North West, Scotland, West England and Wales, Yorkshire and North East. Select the appropriate link below:

W (main): <http://www.hse.gov.uk>

W (contacts): <http://www.hse.gov.uk/contact/maps/index.htm>

MIND, 15-19 Broadway, Stratford, London E15 4BQ
T: 020 8519 2122 F: 020 8522 1725 W: www.mind.org.uk

SANE, First Floor Cityside House, 40 Adler Street, London E1 1EE
T: 020 7375 1002 F: 020 7375 2162 W: www.sane.org.uk

Scottish Association for Mental Health, Cumbrae House, 15 Carlton Court Glasgow G5 9JP
T: 0141 568 7000 W: www.samh.org.uk

Mental Health Foundation

The MHF has offices located in London, Scotland and Wales. Select the appropriate link below:

W (main): <http://mentalhealth.org.uk>

W (contacts): <http://www.mentalhealth.org.uk/contact-us/offices>



Further reading

The Equality Act: UCU briefing

www.ucu.org.uk/media/pdf/r/f/2010_Equality_Act_briefing.pdf

Enabling not Disabling

www.ucu.org.uk/media/pdf/4/8/ucu_enablingnotdisabling_1.pdf

UCU Stress Toolkit

www.ucu.org.uk/index.cfm?articleid=2562

The Fit Note

www.ucu.org.uk/index.cfm?articleid=2424

The Equality Act 2010

www.equalities.gov.uk/equality_act_2010.aspx

Department of Health Survey: Attitudes to Mental Illness 2010

<http://bit.ly/hD1o3>

Health and Safety Executive: Management Standards for Work Related Stress

<http://www.hse.gov.uk/stress/>

Staff Disability Disclosure in the Lifelong Learning Sector (LLUK Publication)

[http://www.lluk.org/documents/Staff_Disability_Disclosure_-_FINAL\(1\).doc](http://www.lluk.org/documents/Staff_Disability_Disclosure_-_FINAL(1).doc)

What are reasonable adjustments? (LLUK Publication)






http://www.lluk.org/documents/FS_-_What_are_Reasonable_Adjustments.pdf

Guide to Mental Health & Debt

<http://www.moneysavingexpert.com/mentalhealth>

Labour Research Department booklets

<http://www.lrd.org.uk/>

-  Discrimination at work: a guide to the Equality Act 2010 (December 2010)
-  Sickness absence and sick pay (October 2010)
-  Health and Safety Law (July 2010)
-  Redundancy Law (February 2009)
-  Stress and mental health at work (October 2009)



Case studies

These case studies are examples of possible action branch reps can take.



Case study 1: Reasonable adjustments / training

Summary: A member employed as a college lecturer having been diagnosed with bipolar disorder had experienced a breakdown in the middle of teaching a group of 16-18 year old students which was not handled properly by his previous employer, despite the member disclosing his mental health status. This resulted in him being ostracised by colleagues and students alike.

Having moved to a new college, the member raised the issue of what type of support could be given should this happen again. He approached his branch representative to see what could be done.

With the agreement of the member, the branch representative convened a meeting with the member and human resources manager to discuss a plan of action. Agreement was sought that in the event of any further breakdowns, where possible, the member should alert the human resources department immediately and the following action taken:



Arrangements would be made to contact the member's doctor or named friend or family member in the case of emergency.



The member would not be sent home unaccompanied as he might be a risk to himself.



At the earliest opportunity, human resources should be notified of the period the member is to be signed off work.



Upon return to work, arrangements would be made with occupational health to see what further assistance (if any) can be given.



At the request of the member, his department head and senior managers would be informed of his mental health status.

The branch rep would further try to reach agreement that any period of disability-related absence would be discounted from the overall sickness absence records and to include training for staff and students as part of the induction programme.







Case studies

Case study 2: Arrangements following periods of illness



Summary: A union member about to return to work following a period of sick leave met with the university's occupational health team. The member informed the occupational health adviser that her GP had made a recommendation that she take a 10-minute break when she feels particularly anxious. The member was advised that a risk assessment would be undertaken prior to the member resuming her duties to 'rule out any factors that may result in the member being signed off sick for further periods'.

The member was concerned about this approach especially as she was covered under the Equality Act 2010 and wanted to know what her rights were, so contacted her branch rep.

A meeting was convened where the branch representative informed the Occupational Health Adviser and HR Manager that:

-  The member had disclosed their mental health status to the employer.
-  The member is covered under the Equality Act.
-  The member poses no risk to either themselves or others.
-  To conduct a risk assessment for a disabled person when one would not be undertaken for a non-disabled person could amount to unlawful discrimination.

The branch representative sought further agreement whereby the member could be:

-  Assigned a 'workplace buddy' to give support, helping them to settle back into work routine.
-  Allowed a break of ten minutes whenever she felt particularly anxious – at the meeting the member shared correspondence with her GP and support worker that the likelihood of this occurring was minimal.

The branch rep also suggested that the university along with the recognised trade union representatives, review the health and safety policy/staff wellbeing policy to reflect what support can be given and where to go for further additional support if needed.



Case studies

Two significant employment appeal tribunal (EAT) judgments relating to mental health.



Case study 3: Reasonable adjustments

Mr Talbot was a train driver with WAGN Railways. He suffered post-traumatic stress disorder after a member of the public committed suicide by jumping under the train he was driving. He was given a job on the ticket barrier, but after an argument with a member of the public, the occupational health physician stated that he should have a role with limited contact with the public. He was given a satisfactory role in the customer relations department, but soon after then lost his job during restructuring. After time off sick he was subsequently dismissed.

The EAT found that failure to retain Talbot in the customer relations department was a breach of the duty to make reasonable adjustments. The employer should have transferred him into a role in that department and considered adjustments to enable him to take up that role long term.

Talbot v WAGN Railways (UKEAT/0770/04/DA)



Case study 4: Disclosure of a mental illness

Ms Hall had a psychiatric condition that could have been controlled by medication, which she refused to take. She did not declare her condition on the health declaration form before being recruited. Within a few days in her new job she began to clash with colleagues and after a series of clashes she was suspended pending disciplinary action. She claimed disability discrimination at tribunal. She was dismissed for failure to comply with conduct standards.

The EAT held that there was a failure by the employer to address the question of reasonable adjustments. However, it also held that no reasonable adjustment could have been made because Hall refused to take medication. It therefore limited compensation for this breach to injury to feelings as no financial loss resulted from it. She was deemed to be a disabled person, and the tribunal found in her favour.

Hall v Department for Work and Pensions (UKEAT/0012/05)

Note: This is a case from 2005. The law has now changed on health questions on application forms (see page 9).



UCU's commitment to equality

While our prime concern is to fight for greater equality and to oppose all forms of harassment, prejudice and unfair discrimination at work, we recognise that this includes the injustices that members face in all areas of their lives, whether on grounds of sex, race, ethnic or national origin, colour, class, impairment or disability status, sexual orientation, gender identity, religion or belief, age, socio-economic status, casualisation or any other aspect of status or personal characteristic which can lead to discrimination.





