



David's story

A DISABILITY AWARENESS TOOLKIT
FOR BRANCH EQUALITY OFFICERS



Foreword

This toolkit is based on the work of the disabled staff network (DSN) and UCU branch committee at the University of Sherwood.^{1,2}

It is designed to assist UCU equality officers who have responsibility for disability issues within their local branch.

The University of Sherwood is a fictitious organisation. However, the case study in this toolkit is not; it follows the real life experience of a UCU member working in higher education as a lecturer in adult nursing. It follows his progress as he discloses his disability and negotiates reasonable adjustments at work and the discrimination he experiences throughout his journey.

This toolkit contains several resources that equality officers might use as part of an intervention to create a more disability-friendly culture within their organisations. The resources include case studies, narratives, audio visual and web links, and overhead transparencies that can be used with members, co-workers, and managers (see Appendix 2) as part of a seminar programme for disability awareness.

You will find additional UCU resources on disability issues at work at: www.ucu.org.uk/equality

With thanks to Dr Malcolm Day for the development of this toolkit.

Contents

Introduction	3
1: Supporting the disabled person at work	5
2: Making reasonable adjustments at work	9
3: Declaring a disability	13
4: Disability discrimination	16
References	20
Appendix 1 - Seminar programme	21
Appendix 2 - Powerpoint slides	22

Equality legislation and disclosure of disability

The Equality Act, introduced in the UK in 2010, states that once a disability is disclosed to an employer, the employer then has a duty to make reasonable adjustments at work for the employee. However, despite this legislation, disclosing a disability to an employer is a very personal decision with potentially far-reaching consequences for the employee. For example, in the US Shrader et al³ indicate that disclosure is likely to lead to lowered supervisor expectations, isolation from co-workers and an increased likelihood of termination from employment. In the UK, UCU⁴ has also found that once disability is disclosed disabled staff are more likely to be subjected to performance management and capability procedures. Therefore, disclosure may not be undertaken lightly, and sometimes not at all. For example, the University of Central Lancashire or UCLAN⁵ found that the stigma often associated with mental health problems was a common reason for non-disclosure. While a study by RADAR⁶ has shown that 75% of those working in senior management roles who had an option to disclose their disability still chose not to do so.

Developing a disability-friendly culture

The UCLAN study⁵ found that disclosure could be made easier by environments becoming more 'disability friendly'. Ways of achieving this included having a key contact person to advise and support disabled staff considering disclosure, and providing disability awareness training for managers and supervisors. Key to the development of a more disability-friendly culture is an understanding of the social model of disability.⁷ This is reflected in the United Nations Convention on the Rights of Persons with Disabilities⁸ which states that: 'disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others.' In other words, people become disabled because of the way society is organised rather than a person's impairment. The social model of disability advocates the removal of any barrier that can restrict choices for disabled people, and when these barriers are removed disabled people can be independent and have choice and control of their lives.

Creating a positive culture for the disclosure of workers' disabilities

The UK Higher Education Equality Challenge Unit (ECU)⁹ has stated it is more cost-effective to plan adjustments than to correct unpredicted mistakes. This realisation is perhaps reflected in disability disclosure

Introduction

rates for English universities which have shown an increase from 2.2% in 2003/04 to 3.9% in 2012/13.¹⁰

The University of Sherwood's 2015 annual diversity report shows that the number of staff disclosing a disability is only 2.1%. This figure has remained constant for the past four years and is almost half that of the national disclosure rate reported by ECU.¹¹ Therefore, the disabled staff network at the University of Sherwood is working with the local UCU committee to develop strategies that will improve disclosure rates, and has designed a volunteer intervention programme to assist with these activities.

The intervention programme consists of: (a) a peer-to-peer support service for disabled staff; and (b) a series of disability awareness seminars for co-workers and managers. The peer-to-peer-disability support service or PPDS provides confidential guidance and information on disability issues for all grades of staff who work at the university so that they can make an informed decision about disability disclosure.

The disability awareness seminars are designed to support the introduction of the peer-to-peer support service. The seminars introduce co-workers and managers to the social model of disability and how this impacts on the daily working lives of disabled people.

SUPPORTING THE DISABLED PERSON AT WORK

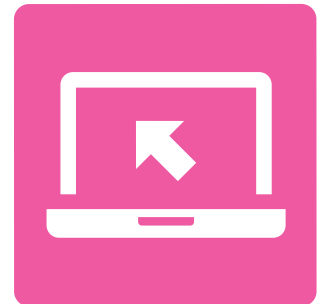
Case study: David

David has worked as a lecturer in the School of Health Care Sciences at Sherwood University for five years. He has been registered with the Department of Work and Pensions (DWP) as a disabled person for five years. He has held a 'blue badge' issued by his local authority for five years which allows him to access disabled parking. David has a progressive impairment - inflammatory arthritis with spinal degeneration. He has had joint replacement surgery and surgery to stabilise his spine. David's mobility is impaired. On a good day, he can swim and cycle short distances. On a bad day, he can only walk about 50 to 100 metres, and requires a walking stick. David also has a visual and hearing impairment. His dexterity is poor and he has altered sensation in his fingers. He is in constant pain and suffers from chronic fatigue. David takes medication to suppress his immune system. This reduces his resistance to infection and makes him clinically anaemic, which adds to his overall fatigue. David drives long distances to and from work each day. By the time he reaches work he is already fatigued, stiff and in severe pain. David chooses to drive to work in off-peak hours to minimise his fatigue.

Reasonable adjustments

The University of Sherwood has a policy in place to support staff who are disabled, which provides the following guidance for supervisors and managers:

- Who is legally classed as disabled?
- What are the legal responsibilities of a manager?
- Disclosure of disability and confidentiality
- Team communications and staff training
- Definition of a reasonable adjustment
- Examples of reasonable adjustments
- How to decide what is 'reasonable'
- Supporting disabled staff
- The Access to Work programme
- The disabled staff network





Using the above guidance, and with support from the local UCU equality officer, David contacted the HR department, the occupational health service and the DWP Access to Work programme and the following reasonable adjustments were agreed:

- disabled parking close to his office
- flexible start and finish times to minimise traffic fatigue at peak times
- working from home where possible
- option to take holidays flexibly
- an office close to toilet facilities without digital locks
- 25% reduction in marking responsibilities during a 'flare up'
- 25% extra time to complete his workload.



In addition, David received funding from the DWP Access to Work programme, which provided specialised equipment for him so that he could carry out his work. This included an ergonomically designed chair, a raise and lower desk, and assistive software for his desktop computer.



The Access to Work programme

<https://www.gov.uk/access-to-work/overview>



Disability and the Law

The Equality Act of 2010 states that an individual is disabled if he or she has a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on his or her ability to undertake normal daily activities. The Act defines: 'substantial' as more than minor or trivial. For example, if it takes much longer than it usually would to complete a daily task like getting dressed.



UCU - Enabling not disabling

https://www.ucu.org.uk/media/1625/Enabling-not-disabling-UCU-Nov-5/pdf/ucu_enablingnotdisabling_nov15.pdf



Reasonable adjustments and the Law

When an individual discloses his or her disability to their employer, the employer then has a duty to make reasonable adjustments at work for the employee. This might include:

- doing things another way - eg allowing someone with social anxiety disorder to have their own desk instead of hot-desking
- making physical changes - eg installing a ramp for a wheelchair user or an audio-visual fire alarm for a deaf person
- letting a disabled person work somewhere else - eg on the ground floor for a wheelchair user

- changing their equipment – eg providing a special keyboard if they have arthritis
- 25% extra time to complete his workload.
- allowing employees who become disabled to make a phased return to work – eg working flexible hours or part-time.

UCU - Reasonable adjustments Removing barriers to disabled people at work

https://www.ucu.org.uk/media/6091/Reasonable-adjustments---removing-barriers-to-disabled-people-at-work-UCU-guidance/pdf/Reasonable_adjustments.pdf

The Public Equality Duty and disabled people at work

The Public Equality Duty 2011

https://www.ucu.org.uk/media/4883/UCU-Equality-Duty-Toolkit/pdf/ucu_equalitydutytoolkit_update_sep15.pdf

The Public Equality Duty requires employers to have due regard to the need to:

- eliminate unlawful discrimination, harassment, and victimisation of disabled staff
- foster good relations between people who are disabled and people who are not disabled, and
- advance equality of opportunity between people who are disabled and people who are not disabled.

Having due regard means that the employer must consciously think about its responsibilities under the Equality Duty as part of its decision-making process. The employer must show how equality issues have influenced their decisions when they:

- develop, evaluate and review policy
- design, deliver, and evaluate services, and
- commission and procure from others.

For example, having due regard to advancing equality of opportunity involves considering the need to:

- minimise disadvantages suffered by people who are disabled
- meet the needs of people with a disability, and
- encourage people with a disability to participate in public life or in other activities where their participation is low. For example, David receives ongoing support at work as a member of the university's disabled staff network





Case study: The disabled staff network (DSN) at the University of Sherwood

The DSN is one of seven equality networks that exist within the University of Sherwood. The DSN aims to:

- develop a culture of positivity and a spirit of openness, which enables disabled staff to contribute more effectively to the overall work of the university
- empower disabled staff to become more proactive in policy decision-making, and
- develop strategies to improve the university's disability disclosure rate.



The work of the DSN is coordinated by a chairperson. There is also a deputy chairperson responsible for policy review, and a deputy chairperson responsible for membership liaison and organisation of meetings. Since July 2015, membership has increased from 28 to 46 members and now includes representatives from campus unions. Meetings are held quarterly, midweek at lunchtime. During the first part of the meeting an invited guest speaker presents on policy affecting disabled workers within the university. The second half of the meeting is held in confidence as individual cases are discussed and individual support is offered. As requested by DSN members there is no attendance record, and no minutes are kept of DSN meetings. Instead, notes from the meetings are circulated by the chair for verification and action. Once confirmed, these notes are submitted to the university's staff equality and diversity committee (SEDC) for further discussion. The DSN produces annual terms of reference, which includes a work plan. Work activities since 2015 have included proposing a case for:



- 1 including the social model of disability within the university's charter of incorporation
- 2 employing a staff disability adviser at the university
- 3 the development of a disability leave policy
- 4 equality impact analyses for all staff with protected characteristics, and
- 5 a leadership programme for disabled staff.



For further information on the work of the DSN at Sherwood University please see: <http://healthcare-communications.imedpub.com/facilitating-a-positive-culture-for-the-disclosure-of-workers-disabilities-experiences-of-developing-a-pilot-volunteer-interventio.pdf>



MAKING REASONABLE ADJUSTMENTS AT WORK



The reasonable adjustment duty

An employer is obliged to remove, reduce or prevent the obstacles faced by a disabled worker so that they have the same access to everything that is involved in doing a job as a non-disabled person. However, the employer must only adjust when they are aware - or should reasonably be aware - that a person has a disability.



Many of the adjustments an employer can make will not be particularly expensive. In their video on confidently disclosing disability, Remploy suggest that reasonable adjustments on average cost no more than a few hundred pounds (Appendix 2: OHP slides). Employers are not required to do more than it is reasonable for them to do, and what is reasonable depends on the size and nature of the employer's organisation.



The aim of reasonable adjustments

The aim of any adjustment is to reduce any substantial disadvantage. However, the employer must only make adjustments that are reasonable. The employer must look at:



- 1 whether they need to change some of their policies
- 2 some of the ways they usually do things
- 3 removing barriers that would place the disabled worker at a substantial disadvantage.



What should be considered when making reasonable adjustments?

When deciding reasonable adjustments an employer needs to ask whether the way they do things or any item in the workplace or the absence of a supporting aid of service may put the disabled worker at a 'substantial disadvantage' when compared with a worker who is not disabled.



If a substantial disadvantage does exist, then the employer must make reasonable adjustments. It should be noted that anything which is more than minor or trivial is regarded as being a substantial



disadvantage. (See the Equality and Human rights Commission case study.)

Discrimination and failure to make reasonable adjustments

If a worker is disabled and can show:

- 1 that there are barriers that should have been identified
- 2 there are reasonable adjustments that could have been made, and
- 3 the employer does nothing

then the disabled worker can bring a claim against their employer in the Employment Tribunal, as any failure to make reasonable adjustments counts as unlawful discrimination.



Case study: the new student service centre at the University of Sherwood

- The newly built student service center at the university has open offices with many glass doors and partitions.
- During the initial equality assessment, disabled staff pointed out that the open office configuration would substantially disadvantage deaf, dyslexic, and visually impaired workers.
- Additionally, workers with neuro-diverse impairments such as autism would be substantially disadvantaged by the noisy environment.



Points to consider

An equality assessment has already been undertaken with disabled staff. However, if a worker is disabled and can show that:

- there are barriers their employer should have identified
- there are reasonable adjustments their employer could have made
- their employer has done nothing



then the disabled worker can bring a claim against their employer to the Employment Tribunal, as any failure to make reasonable adjustments may count as unlawful discrimination.

However, the Reasonable Adjustment Duty is about making reasonable adjustments in the workplace. For example, the Equality and Human Rights Commission¹¹ cite the following case:

The design of a particular workplace makes it difficult for a disabled person with a hearing impairment to hear because the main office is open plan and has hard flooring so there is a lot of background noise. The employer agrees that staff meetings should be held in a quieter place which allows that person to fully participate in the meeting. By doing this, the employer is making a reasonable adjustment.



Case study: David

David has been provided with an individually-designed ergonomic chair, and a raise and lower desk, to assist him with his mobility problems. This equipment is partially funded by Access to Work, and partially funded by the university. The operations manager from the School of Health Sciences makes repeated email requests to David that staff with back problems may borrow this equipment when he is not in his office. David politely refuses each request and gives reasons for his refusal. The manager is insistent saying: 'But I'm only asking you to be flexible.' What should David do?

Points to consider

- Under health and safety law the university has a duty of care. David's equipment is specifically designed for his needs. Therefore, will David's equipment benefit others or make their condition worse?
- David has been trained by the installers to use his equipment safely and appropriately. If he allows others to use this equipment without proper training will the university become personally liable for any injury that might be caused by inappropriate usage?
- As David's equipment is partially paid for by public funds, and partially by university funds, David has a responsibility to ensure that his equipment is used appropriately. If another user damages it, will the university be able to legitimately claim a replacement?
- Why didn't the operations manager follow the university's policy for making reasonable adjustments and apply this to the workers with back pain?

Summary

- The reasonable adjustment duty requires employers to make sure that a disabled person has the same access to everything that is involved in doing a job as a non-disabled person.
- When this duty arises, an employer is obliged to remove, reduce or prevent the obstacles faced by a disabled worker.
- The employer must only adjust where they are aware - or should reasonably be aware - that a person has a disability.
- The employer must pay for the adjustment but most are not costly, and Access to Work can provide some of the funding towards the adjustment.
- If a disabled worker can show that:





- there are barriers their employer should have identified
- there are reasonable adjustments their employer could have made, and
- their employer does nothing

then the disabled worker can bring a claim against their employer in the Employment Tribunal, as any failure to make reasonable adjustments counts as unlawful discrimination.



DECLARING A DISABILITY



Why is declaration or disclosure important?

Reasonable adjustment is a term used under the Equality Act (2010) whereby an employer is legally obliged to remove barriers in the workplace so that a disabled person is not put at disadvantage when compared to a non-disabled person.

However, if a disabled person does not declare their disability they are not entitled to any reasonable adjustments at work. If a person's disability causes them to take time off from work and they have not disclosed their disability, then this time may have to be taken as annual leave or sick leave, rather than disability leave. Please see UCUs policy on negotiating disability leave at:

https://www.ucu.org.uk/media/7835/Disability-leave-2016/pdf/Disability_Leave_2016.pdf

Also, if a person does not disclose their disability then in certain circumstances their employer may regard them as being in breach of health and safety law.

Finally, if a person does not disclose their disability they may lay themselves open to dismissal on the grounds of capability.

Please refer to UCU's guidance on performance management and sick leave at: https://www.ucu.org.uk/media/8157/Disabled-members-performance-management-and-sickness-absence---branch-briefing/pdf/Disabled_members__performance_management_and_sickness_absence_docx.pdf

Fear of disclosure

Despite the legislation outlined within the Equality Act, disclosing a disability to an employer is a very personal decision with potentially far-reaching consequences for the employee. Therefore, disclosure or declaration of a disability may not be undertaken lightly, and sometimes not at all. Shrader et al.³ indicate that disclosure is likely to lead to: lowered supervisor expectations, isolation from co-workers and an increased likelihood of termination from employment.





In this country, RADAR⁶ has shown that 75% of those working in senior management roles who had an option to conceal their disability still chose not to do so as they feared it may have affected their chance of promotion. Additionally, UCU⁴ has found that some disabled staff do not disclose their disability for fear of being prioritised for redundancy. Further, UCU found that members who disclosed their disability were more likely to be subjected to performance management and capability procedures.



A study conducted by the University of Central Lancashire or UCLAN⁵ found that the stigma often associated with mental health problems was a common reason for non-disclosure. However, the UCLAN study found that disclosure could be made easier if work environments became more 'disability friendly.' Ways of achieving this included having a key contact person to advise and support disabled staff considering disclosure, and providing disability awareness training for managers and supervisors.



Case study: facilitating a positive culture for the disclosure of workers' disabilities

The University of Sherwood's 2015 annual diversity report shows that the number of staff disclosing a disability is only 2.1%. This figure has remained constant for the past 4 years and is almost half that of the national disclosure rate reported by ECU in 2014. The Disabled Staff Network (DSN), in association with local UCU committee members, designed a volunteer intervention programme to improve disclosure rates.



The programme consists of: a peer to peer support service for disabled staff, and a series of disability awareness seminars for co-workers and managers. The peer to peer disability support service or PPDS provides confidential guidance and information on disability issues for all grades of staff who work at the university so that they can make an informed decision about disability disclosure. The disability awareness seminars are designed to support the introduction of the PPDS. The seminars introduce coworkers and managers to the social model of disability and show how this impacts on the daily working lives of disabled people.



For further information on the volunteer intervention programme please see: <http://hospital-medical-management.imedpub.com/facilitating-a-positive-culture-for-the-disclosure-of-workers-disabilities-within-a-higher-education-institution.php?aid=18155>



Summary

- Equality legislation indicates there are some advantages in disclosing a disability to an employer, which may include reasonable adjustments in the workplace.
- The literature suggests that low disability disclosure rates may be indicative of an oppressive or discriminatory workplace culture.
- The literature suggests that disability disclosure rates may be improved if a disability friendly culture is encouraged.
- Examples of developing a disability-friendly culture include the provision of support and guidance for disabled staff, and disability awareness training for managers.
- At the University of Sherwood, a pilot volunteer intervention programme has been introduced to facilitate an appropriate culture for the disclosure of workers' disabilities. This has led to the successful implementation of a PPDS and the provision of disability awareness seminars for coworkers and managers.
- The following link provides a useful summary of UCUs position on declaring a disability: https://www.ucu.org.uk/media/5445/Declaring-a-disability-UCU-guidance/pdf/Declaring_a_disability.pdf



4

DISABILITY DISCRIMINATION



David's experience as a disabled worker

Section 1 introduced you to David, a lecturer in the School of Health Sciences at Sherwood University. David has a progressive impairment - inflammatory arthritis with spinal degeneration and impaired mobility. Several reasonable adjustments were put in place to support him. However, David cannot say that his experience of being a disabled worker has been a good one.



Despite supporting evidence from David's rheumatologist, his GP, an occupational therapist, and the DWP disability adviser, David had to involve his UCU equality officer before his reasonable adjustments were finally agreed. This took two years. He still has no guaranteed disabled parking.



Despite the adjustments, David is still subjected to barriers in the workplace, and the unconscious bias of co-workers and managers, which often upsets him. He feels isolated and stigmatised.

David keeps a diary of issues affecting his disability. Here are just a few of the issues that David has noted.

What is unconscious bias?

<https://www.youtube.com/watch?v=dVp9Z5k0dEE>



NB you may require permission from the Royal Society if you are showing this video in a public place.

Example 1: David's experience of unconscious bias in the workplace

When David pointed out to colleagues that he had a 25% reduction in his marking workload he was bombarded with lengthy emails from his peers, which included comments such as: 'Well, I don't think what I am asking is a big ask' and: 'Well, what about my workload?' Also, 'I'm only asking you to be flexible.'

Points to consider

The Public Equality Duty 2011 requires employers to have due regard to the need to:

- eliminate unlawful discrimination, harassment, and victimisation of disabled staff
- foster good relations between people who are disabled and people who are not disabled.

Therefore, it may be illegal for an employer to allow workers to harass an individual by making disparaging remarks, or to make remarks that may cause upset or offence.

Finally, it is important to acknowledge that this example looks at David's experience through the prism of unconscious bias. UCU recognises that the concept is now widely used but has reservations about its use to excuse conscious and deliberate bias.

Example 2: David's experience of an abuse of authority

David has been told by his university that there is a "no reservation" policy for staff car parking. Recently, David had to attend a meeting but when he tried to use an accessible parking space he found it was taken by a non-blue-badge-holder. When David telephoned Security for assistance he was told that this was the vice-chancellor's personal vehicle and that his chauffeur had special permission to park it anywhere he liked (the vice-chancellor is not disabled). David was late for his meeting.

Points to consider

- The Public Equality Duty 2011 requires employers to have due regard to the need to advance equality of opportunity between people who are disabled and people who are not disabled. Therefore, it may be illegal for employers to treat an individual less favourably because they are disabled than someone without a disability would be treated in the same circumstances - this is called direct discrimination.
- It may be illegal not to make reasonable adjustments in the workplace to allow a disabled person to work or to continue to work, eg the provision of disabled parking.

Example 3: The impact of stereotypes on David's self-esteem

When David was first negotiating his reasonable adjustments it was suggested by his deputy head of school that he be provided with a mobility scooter to get around the university. However, David was concerned for his independence. And when negotiating reasonable adjustments for his hearing impairment it was suggested by a school administrator that he could carry around a portable audio loop system, which he could use in any classroom.





David was concerned about what he thought were ill-conceived and stereotypical suggestions, and he directly challenged the two managers by stating that he could (no doubt) strap the audio loop and its container to the back of his mobile scooter to get around the School in a timely fashion. David was subsequently given a formal warning by his head of school for making a 'sarcastic and back-handed comment.'

Points to consider

- Workplace adjustments must be seen to be reasonable to both parties, and based on the needs of the disabled person.
- The Public Equality Duty states that employers have a duty to foster good relations between people who are disabled and people who are not disabled therefore it may be illegal for managers to make suggestions that are upsetting or cause offence. The idea of using a disability scooter was both unsafe and undignified to David.
- It may also be illegal to victimise an individual if they take direct action because of discrimination against them. David's remarks were to inform his managers that their suggestions were ill considered. Therefore was it appropriate for David to be formally admonished by his departmental head?

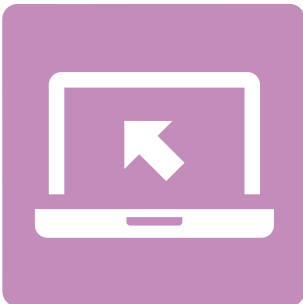


Example 4: David is isolated from team activities

David is unable to actively participate in team meetings as most are held towards the end of the day. David works flexible hours to accommodate his fatigue, so most of these meetings occur after he has gone home. David has contacted team leaders requesting that meetings take place earlier in the day but his requests have largely been ignored.

Points to consider

It may be illegal for an employer to indirectly discriminate against an individual, for example by requiring something which applies to all staff but which is much more difficult for a disabled person to meet.



Example 5: David experiences financial difficulty in relation to his continuing professional development activities

When staff at the University of Sherwood apply for financial support to present at a conference David's school automatically sets a 'ceiling' of £1000 for individual travel costs and conference fees. However, when David travels by train he can only guarantee he gets a seat if he travels first class. Similarly, if he travels by air, David needs to book an upgrade to minimize his pain, stiffness, and discomfort.



Therefore, David's travel costs are often higher than those of non-disabled staff and he often finds he is financially disadvantaged by the extra personal contribution he must make towards his CPD activity

Points to consider

It may be illegal to indirectly discriminate against an individual, for example, by requiring something which applies to all staff but which is much more difficult for a disabled person to meet.

Section summary

It is illegal for an employer:

- to treat an individual less favourably because they are disabled. This is called direct discrimination
- to discriminate against an individual because of their connection with someone else who is disabled. This is called discrimination by association
- to indirectly discriminate against an individual by requiring something which applies to all staff but which is much more difficult for a disabled person to meet
- not to make reasonable adjustments in the workplace for a disabled person
- to harass an individual if they are disabled, for example, by making disparaging remarks about their disability or remarks that cause offence
- to victimise a disabled individual if they act because of discrimination against them.



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Seminar programme for disability awareness

The following seminars will introduce UCU members, co-workers and managers to the social model of disability and how this impacts on the working lives of disabled people. Issues such as supporting the disabled person at work, reasonable adjustment, declaring a disability and disability discrimination will be discussed in a series of four seminars, as follows:

1 Supporting the disabled person at work

The UN Convention on the Rights of Persons with Disabilities states that: "...disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinder their full and effective participation in society on an equal basis with others." This seminar will explore the ways in which employers are working to reduce barriers within the workplace for disabled staff.

2 Making reasonable adjustments at work

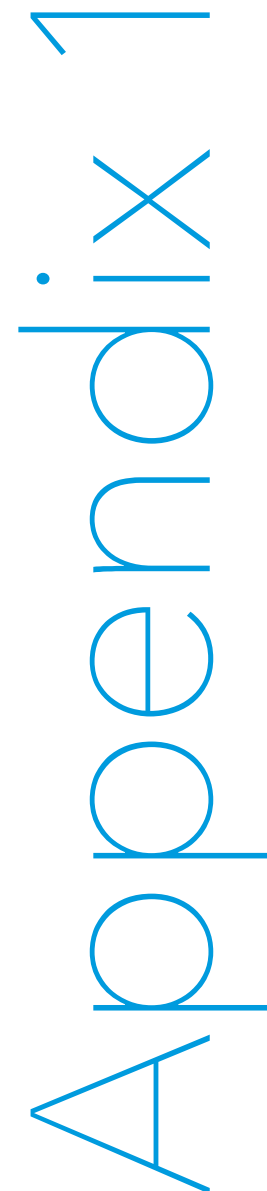
When an employer knows or reasonably ought to know of a disabled person's disability, they are under a duty to make 'reasonable adjustments'. This seminar will discuss personal experience and case study relating to reasonable adjustments that have been made within the work place and will identify what is regarded as best practice in this area.

3 Declaring a disability

The UK Higher Education Equality Challenge Unit has stated it is more cost-effective to plan adjustments than to correct unpredicted mistakes. This realisation is (perhaps) reflected in disability disclosure rates for English universities which have doubled from 2.2% in 2003/04 to 3.9% in 2012/13 This workshop will explore the factors that enhance and inhibit the declaration of a disability within the work place.

4 Disability discrimination

The public-sector equality duty states that public bodies must: eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by, or under the Equality Act. The concept of unconscious bias and how this may contribute to ableism within the workplace is explored during this seminar.



POWERPOINT SLIDES

SECTION 1: DAVID'S STORY

- David has worked at his university for five years. He has also been registered with the DWP as a disabled person for five years. He has held a blue badge for five years, issued by his Local Authority.
- David has a progressive impairment - inflammatory arthritis with spinal degeneration. He has had joint replacement surgery and surgery to stabilise his spine. He is currently waiting for further joint replacement surgery to improve his mobility.
- David's mobility is impaired. On a good day he can swim and cycle and undertake upper body strength exercises using small weights. On a bad day he can only walk about 50 to 100 metres, and requires a walking stick.
- David also has a visual and hearing impairment. His dexterity is also poor and he has altered sensation in his fingers. He is in constant pain and suffers from chronic fatigue. David takes medication to suppress his immune system. This reduces his resistance to infection and makes him clinically anaemic, which adds to his overall fatigue.

SECTION 1: DAVID'S STORY

- David drives 60 miles to work each day, and 60 miles home. By the time he reaches work he is already fatigued, stiff and in severe pain. David chooses to drive to work in off peak hours to minimise his fatigue.
- David has received funding from the DWP Access to Work programme, which provides specialised equipment for him so that he can carry out his work e.g. an ergonomically designed chair, a raise and lower desk; and assistive software.
- After intervention from UCU the following reasonable adjustments were agreed with senior managers and HR .

SECTION 1: DAVID'S REASONABLE ADJUSTMENTS

- Guaranteed disabled parking close to his office
- Flexible start and finish times to minimise traffic delays at peak times
- Working from home where possible
- Option to take holidays flexibly
- An office close to toilet facilities without digital locks
- 25% reduction in marking responsibilities
- 25% extra time to complete his workload

SECTION 1: LEGAL DEFINITION OF DISABILITY

- You're disabled under the Equality Act 2010 if you have a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on your ability to do normal daily activities.
- 'Substantial' is more than minor or trivial e.g. it takes much longer than it usually would to complete a daily task like getting dressed.
- 'Long-term' means 12 months or more eg a breathing condition that develops as a result of a lung infection.

SECTION 1: REASONABLE ADJUSTMENTS

Once an individual declares disability the employer must make adjustments to ensure that disabled workers aren't disadvantaged when doing their jobs. This might include:

- doing things another way -eg allowing someone with social anxiety disorder to have their own desk instead of hot-desking
- making physical changes - eg installing a ramp for a wheelchair user or an audio-visual fire alarm for a deaf person
- letting a disabled person work somewhere else - eg on the ground floor for a wheelchair user
- changing their equipment - eg providing a special keyboard if they have arthritis
- allowing employees who become disabled to make a phased return to work - eg working flexible hours or part time.

SECTION 1: REASONABLE ADJUSTMENTS AND ACCESS TO WORK

The DWP Access to Work grant has recently been capped at £40,000 and the total amount depends on individual circumstances. The money can pay for things like:

- adaptations to the equipment you use
- special equipment
- fares to work if you can't use public transport
- a support worker or job coach to help you in your workplace
- a support service if you have a mental health condition and you're absent from work or finding it difficult to work
- disability awareness training for your colleagues
- a communicator at a job interview
- the cost of moving your equipment if you change location or job.

SECTION 1: THE PUBLIC EQUALITY DUTY

The Equality Duty requires the university to have due regard to the need to:

- eliminate unlawful discrimination, harassment, and victimisation of disabled staff
- foster good relations between people who are disabled and people who are not disabled
- advance equality of opportunity between people who are disabled and people who are not disabled.

SECTION 1: DUE REGARD

Having due regard means that the university has to think about its responsibilities under the Equality Duty as part of its decision making process.

The University must show how equality issues have influenced their decisions when they (1) develop, evaluate and review policy;(2) they design, deliver and evaluate services, and (2) they commission and procure from others. For example, having due regard to advancing equality of opportunity involves considering the need to:

- minimise disadvantages suffered by people who are disabled
- meet the needs of people with a disability
- encourage people with a disability to participate in public life or in other activities where their participation is low.

SECTION 2: DAVID'S STORY

- Guaranteed disabled parking close to his office
- Flexible start and finish times to minimise traffic delays at peak times
- Working from home where possible
- Option to take holidays flexibly
- An office close to toilet facilities without digital locks
- 25% reduction in marking responsibilities
- 25% extra time to complete his workload

SECTION 2: REASONABLE ADJUSTMENT DUTY

- An employer is obliged to remove or reduce or prevent the obstacles faced by a Disabled worker so that he/she has the same access to everything that is involved in doing a job as a non-disabled person.
- The employer only has to make adjustments when they are aware - or should reasonably be aware - that a person has a disability.
- Many of the adjustments an employer can make will not be particularly expensive e.g. in their video on confidently disclosing disability Remploy suggest that reasonable adjustments on average cost no more than a few hundred pounds.
- Also, employers are not required to do more than it is reasonable for them to do, and what is reasonable depends on the size and nature of the employer's organisation.

SECTION 2: DISCRIMINATION AND FAILURE TO MAKE REASONABLE ADJUSTMENT

If a worker is disabled and can show:

- that there are barriers that should have been identified
- there are reasonable adjustments that could have been made,
- and their employer does nothing

then the disabled worker can bring a claim against their employer in the Employment Tribunal, as any failure to make reasonable adjustments counts as unlawful discrimination.

Appendix 2

SECTION 2: SO WHAT SHOULD BE CONSIDERED?

When determining reasonable adjustments an employer needs to ask themselves whether:

- the way they do things
- there is any physical feature in the workplace
- there is an absence of an auxiliary aid or service

that puts the disabled worker at a 'substantial disadvantage' compared with a person who is not disabled. Anything that is more than minor or trivial is regarded as a substantial disadvantage.

If a substantial disadvantage does exist, then the employer must make reasonable adjustments.

SECTION 2: THE AIM OF REASONABLE ADJUSTMENT

- The aim of any adjustment is to reduce any substantial disadvantage.
- However, the employer only has to make adjustments that are reasonable.
- The employer must look at (1) whether they need to change some of their policies, (2) some of the ways they usually do things, or (3) remove barriers that would place the disabled worker at a substantial disadvantage.

SECTION 2: CASE STUDY- A NEW STUDENT SERVICE CENTRE AT THE UNIVERSITY SHERWOOD

- The newly built student service centers at university X have open offices with many glass doors and partitions.
- During the initial equality assessment disabled staff pointed out that the open office configuration would substantially disadvantage deaf, dyslexic and visually impaired workers.
- Also, workers with neuro diverse impairments such as autism would be substantially disadvantaged by the noisy environment.
- What should disabled staff and managers who work in this area do?

SECTION 2: POINTS TO CONSIDER

- The Higher Education Equality Challenge Unit (ECU, 2011) has indicated that it is more cost - effective to plan adjustments than to correct mistakes.
- An equality assessment has been undertaken with disabled staff.
- If a worker is disabled and can show that :
 - there are barriers their employer should have identified
 - there are reasonable adjustments their employer could have made
 - and their employer does nothing

then the disabled worker can bring a claim against their employer in the Employment Tribunal, as any failure to make reasonable adjustments counts as unlawful discrimination - EHRC 2016

SECTION 2: EXAMPLE OF A REASONABLE ADJUSTMENT IN AN OPEN OFFICE AREA

Remember, it is about REASONABLE adjustment eg EHRC (2016)

'The design of a particular workplace makes it difficult for a disabled person with a hearing impairment to hear, because the main office is open plan and has hard flooring, so there is a lot of background noise. The employer agrees that staff meetings should be held in a quieter place, which allows that person to fully participate in the meeting. By doing this, the employer is making a reasonable adjustment.'

SECTION 2: CASE STUDY- DAVID'S STORY

David has been provided with an individually designed ergonomic chair, and a raise and lower desk, to assist him with his mobility problems.

- This equipment is partially funded by Access to Work, and partially funded by the university.
- The operations manager makes repeated email requests of David for staff with back problems to borrow this equipment when he is not in his office.
- David politely refuses each request and gives reasons for his refusal.
- The manager is insistent saying: 'But I'm only asking you to be flexible'.
- What should David do?

Appendix 2

SECTION 2: POINTS TO CONSIDER

- Under health and safety law the university has a duty of care. David's equipment is specifically designed for his needs. Therefore, will David's equipment benefit others or make their condition worse?
- David has been trained by the installers to use his equipment safely and appropriately. If he allows others to use this equipment without proper training will the university become personally liable for any injury that might be caused by inappropriate usage?
- David's equipment was partially funded by public funds, and partially funded by university funds, David has a responsibility to ensure that his equipment is used appropriately ie if another user damages it will the university be able to legitimately claim a replacement?
- Why didn't the operations manager follow the university's policy for making reasonable adjustments and apply this to the worker with back pain?

SECTION 2: SUMMARY

- The reasonable adjustment duty requires employers to make sure that a disabled person has the same access to everything that is involved in doing a job as a non-disabled person.
- When this duty arises, an employer is obliged to remove or reduce or prevent the obstacles faced by a disabled worker.
- The employer only has to make adjustments where they are aware - or should reasonably be aware - that a person has a disability.
- The employer has to pay for the adjustment but most are not costly; and Access to Work can provide some of the funding towards the adjustment see UoN policy guideline on managers working with disabled staff (2015)
- If a disabled worker can show that: there are barriers their employer should have identified; there are reasonable adjustments their employer could have made, and their employer does nothing then the disabled worker can bring a claim against their employer in the Employment Tribunal, as any failure to make reasonable adjustments counts as unlawful discrimination.

SECTION 3: WHY DISCLOSE/DECLARE?

- Reasonable adjustment is a term used under the Equality Act (2010) whereby an Employer is legally obliged to make adjustments and to remove barriers in the workplace so that a disabled person is not put at disadvantage when compared to a non-disabled person.
- However, if a disabled person does not disclose their disability they are not entitled to any reasonable adjustments at work.
- If a person's disability causes them to take time off from work, and they have not disclosed their disability, then this time may have to be taken as annual leave or sick leave, rather than disability leave (if this is policy - see UCU briefing).
- If a person does not disclose their disability to their employer they may be in breach of Health and Safety Law.
- If a person does not disclose their disability they may lay themselves open to dismissal on the grounds of capability.

SECTION 3: DECLARING A DISABILITY

A 15 minute video on declaring a disability please watch out for the declaration plan www.youtube.com/watch?v=Qg3ZHzPJpxI

NB If you are showing this video in a public place You may need permission from Remploy to use this resource.

SECTION 3: FEAR OF DECLARATION

- RADAR (2010) has shown that 75% of those working in senior management roles who had an option to conceal their disability still chose to do so as they feared it may have affected their chance of promotion.
- Some disabled staff do not disclose their disability for fear of being prioritised for redundancy (UCU, 2012) . However under the Equality Act an employer cannot select you for redundancy just because you have a disability and the criteria employers use to select people for redundancy must not put disabled people at a disadvantage.
- Fevre et al (2011, 2013) suggests that people with physical or mental impairments or long-term conditions are more likely to experience ill-treatment than other employees
- A survey conducted by the University and College Union (UCU, 2015) found that members who disclosed their disability were more likely to be subjected to performance management and capability procedures.

SECTION 3: CASE STUDY - UNIVERSITY OF SHERWOOD

The Disabled Staff Network (DSN), in association with local UCU Committee designed a volunteer intervention programme to improve disclosure rates. This consisted of a peer to peer support service for disabled staff; and a series of disability awareness seminars for co-workers and managers. Please see link below:

<http://hospital-medical-management.imedpub.com/facilitating-a-positive-culture-for-the-disclosure-of-workers-disabilities-within-a-higher-education-institution.php?aid=18155>

SECTION 3: THE PEER-TO-PEER DISABILITY SUPPORT SERVICE AT THE UNIVERSITY OF SHERWOOD

- The PPDS provides confidential guidance and information on disability issues for all grades of staff who work at the University of Sherwood.
- The PPDS is not intended to be a substitute for other professional disability services provided by the university. Rather, any information provided will be based on the lived experience of disabled staff who has worked at the university.
- The PPDS provides information concerning the pros and cons of disclosing a disability and reasonable adjustments at work. It will provide disabled workers with an opportunity to discuss their fears and concerns with an individual who has had personal experience of these issues so that they may reach an informed decision regarding disclosure.

SECTION 3: QUERIES FROM SUPPORT STAFF

'I would like to use the PPDS service. I have been given very little advance notice of my performance review meeting and I feel that, as a result of my learning disability, I would benefit from advice on how best to prepare for my PDPR.'

SECTION 3: QUERIES FROM ACADEMIC STAFF

'I've been meaning to declare a disability for a while but keep 'not getting round to it' which I presume is a form of denial. I have a progressive eye condition which currently seems stable, but does limit the amount of reading I can do. I also had to give up driving. I'm not really in need of any adjustments - I'm making those myself by working in different ways. But I thought I should declare it for the future when I may need to. Any advice appreciated, but really I just need someone to make sure I do it.'

SECTION 3: WHAT PEOPLE THINK OF THE PPDS

'Thank you very much once more for kindly taking the time to talk with me, it was extremely helpful to discuss the various options and ramifications of the decision, and to have greater clarity on how to navigate the process. I am extremely grateful to have this support in place.'

'Thanks so much for the information it is priceless!'

'Thank you very much indeed for your very helpful reply. I didn't realise there were all these options open to me, and it is reassuring to know that there is the opportunity to get more support, and to have alternatives in how I respond to these issues.'

SECTION 3: SUMMARY

- Equality legislation indicates there are some advantages in disclosing a disability to an employer, which may include reasonable adjustments in the workplace.
- The literature suggests that low disability disclosure rates may be indicative of an oppressive or discriminatory workplace culture.
- The literature suggests that disability disclosure rates may be improved if a disability friendly culture is encouraged.
- Examples of developing a disability friendly culture include the provision of support and guidance for disabled staff, and disability awareness training for managers.
- At the University of Sherwood, a pilot volunteer intervention programme has been introduced to facilitate an appropriate culture for the disclosure of workers' disabilities. This has led to the successful implementation of a peer to peer disability support service and the provision of disability awareness seminars for co-workers and managers.

SECTION 4: DAVID'S STORY

- David has worked at his university for 5 years. He has also been registered with the DWP as a disabled person for 5 years. He has held a blue badge for 5 years, issued by his Local Authority.
- David has a progressive impairment i.e. inflammatory arthritis with spinal degeneration. He has had joint replacement surgery and surgery to stabilise his spine.
- David's mobility is impaired. On a good day he can swim and cycle short distances. On a bad day he can only walk about 50 to 100 metres, and requires a walking stick.
- David also has a visual and hearing impairment. His dexterity is poor and he has altered sensation in his fingers. He is in constant pain and suffers from chronic fatigue. David takes medication to suppress his immune system. This reduces his resistance to infection and makes him clinically anaemic, which adds to his overall fatigue.

SECTION 4: DAVID'S STORY

- David drives 60 miles to work each day, and 60 miles home. By the time he reaches work he is already fatigued, stiff and in severe pain. David chooses to drive to work in off peak hours to minimise his fatigue.
- David has received funding from the DWP Access to Work Programme, which provides specialised equipment for him so that he can carry out his work e.g. an ergonomically designed chair, a raise and lower desk; and assistive software.
- After intervention from his trade union and the occupational health department the following reasonable adjustments were agreed with senior managers and HR .

SECTION 4: DAVID'S AGREED REASONABLE ADJUSTMENTS

- Disabled parking close to his office
- Flexible start and finish times to minimise traffic fatigue at peak travel times
- Working from home where possible
- Option to take holidays flexibly
- An office close to toilet facilities without digital locks
- 25% reduction in marking responsibilities
- 25% extra time to complete his workload

SECTION 4: DAVID'S EXPERIENCE AS A DISABLED WORKER

- David cannot say that his experience of being a Disabled member of staff at his university has been a good one.
- There have been very long delays in trying to negotiate reasonable adjustments and he still has no guaranteed disabled parking as his university has a no reservation policy for car parking.
- Despite supporting evidence from David's rheumatologist, his GP an occupational therapist, and the DWP disability adviser, David had to involve his UCU equality officer before his reasonable adjustment were finally agreed. This took two years.
- Also, David is still subjected to barriers in the workplace, and the unconscious bias of co-workers and managers, which often upsets him. He feels isolated and stigmatised. Here are just a few of the anecdotes David has noted in his disability diary.

SECTION 4: UNCONCIOUS BIAS

<https://www.youtube.com/watch?v=dVp9Z5k0dEE>

UCU's position on unconscious bias

SECTION 4: EXAMPLE ONE - DAVID'S EXPERIENCE OF UNCONCIOUS BIAS IN THE WORKPLACE

When David pointed out to colleagues that he had a 25% reduction in his marking, he was bombarded by lengthy emails, which included comments such as: 'Well, I don't think what I am asking is a big ask' and: 'Well, what about my workload?' Additionally, 'I'm only asking you to be flexible.'

SECTION 4: POINTS ALREADY CONSIDERED

It may be illegal for an employer to:

harass an individual by making disparaging remarks about an individual's disability, or to make remarks that may cause upset or offence.

SECTION 4: EXAMPLE TWO - DAVID'S EXPERIENCE OF POWER AND AUTHORITY

- David has been told by his university that there is a 'no reservation' policy for staff car parking.
- Recently, David had to attend a meeting but when he tried to use an accessible parking space he found it was taken by a non-blue-badge holder.
- When David telephoned security for assistance he was told that this was the VC's personal vehicle and that his chauffeur had special permission to park it anywhere he liked (The VC is not disabled)
- David was late for his meeting.

SECTION 4: POINTS ALREADY CONSIDERED

It may be illegal for an employer:

to treat an individual less favourably because they are disabled than someone without a disability would be treated in the same circumstances. This is called **direct discrimination**.

not to make **reasonable adjustments** to the workplace to allow you to work or to continue to work.

SECTION 4: EXAMPLE THREE - THE IMPACT OF STEREOTYPES ON DAVID'S SELF-ESTEEM

- When David was first negotiating his reasonable adjustments it was suggested by his supervisor that he should be provided with a mobility scooter to get around the university.
- Later, when negotiating reasonable adjustments for his hearing impairment it was suggested that he carry around a portable audio loop system, which he could use in any classroom.
- David's reply to these suggestions was that he could (no doubt) strap the audio loop and its container to the back of his mobile scooter in order to get around the School in a timely fashion.
- David was subsequently admonished for making a 'sarcastic and back-handed comment.'

SECTION 4: POINTS ALREADY CONSIDERED

It is illegal for an employer to:

harass a disabled person, for example, by making remarks that are upsetting or cause offence

victimise an individual if they take action because of discrimination against them.

SECTION 4: EXAMPLE - DAVID FEELS ISOLATED FROM TEAM ACTIVITIES

- David is unable to actively participate in team meetings as most are held towards the end of the day. He works flexible hours to accommodate his fatigue, so most of these meetings occur after he has gone home
- David has contacted team leaders requesting that meetings take place earlier in the day but his requests have largely been ignored.

SECTION 4: POINTS TO CONSIDER

It may be illegal for an employer to:

indirectly discriminate against an individual e.g. by requiring something which applies to all staff but which is much more difficult for a disabled person to meet.

SECTION 4: EXAMPLE - DAVID IS FINANCIALLY DISADVANTAGED BY ADDITIONAL COSTS FOR HIS CAREER DEVELOPMENT

- When staff apply for financial support to present at a conference David's school automatically sets a "cap" for individual travel costs and conference fees.
- However, when David travels by train he can only guarantee himself a seat if he travels by first class. Similarly if he travels by air, David needs to book an upgrade to minimise his pain, stiffness and discomfort.
- As a consequence David's travel costs are often higher than those of non-disabled staff and he often finds he is financially disadvantaged by the extra personal contribution he has to make towards his CPD activity,

Appendix 2

SECTION 4: POINTS TO CONSIDER

It may be illegal for an employer to **indirectly discriminate** against an individual eg by requiring something which applies to all staff but which is much more difficult for a disabled person to meet

SECTION 4: SUMMARY - IT IS AGAINST THE LAW...

- to treat an individual less favourably because they are disabled. This is called direct discrimination
- to discriminate against an individual because of their connection with someone else who is disabled. This is called discrimination by association
- to indirectly discriminate against an individual eg by requiring something which applies to all staff but which is much more difficult for a disabled person to meet
- not to make reasonable adjustments in the workplace for a disabled person
- to harass an individual if they are disabled, for example, by making disparaging remark about their disability or remarks that or cause offence
- to victimise a disabled individual if they take action because of discrimination against them.

