

New Acas guidance on making reasonable adjustments for mental health conditions

For the first time, Acas has published specific guidance on how reasonable adjustments can be used for staff with mental health conditions. The guidance considers how adjustments should be agreed and the role that managers have in managing employees once adjustments are in place. In this article we summarise the key points to note.

What are reasonable adjustments for mental health?

Employers have a positive duty to make reasonable adjustments to the workplace to remove or reduce a disadvantage related to a person's disability. "Disability" covers both physical and mental impairments which have a substantial and adverse effect on a person's ability to carry out day to day activities. Examples of mental health impairments that may qualify as a disability include depression, anxiety, bipolar disorder, ADHD and OCD.

The duty covers disadvantages caused by working practices, policies, physical features of the workplace or by the absence of an auxiliary aid. What is "reasonable" will depend on a number of factors including whether the adjustment is practicable, the financial and other costs of making the adjustment and the size and financial resources available to the employer. Importantly, the duty to make reasonable adjustments applies whether or not a disabled employee requests them.

The new Acas guidance highlights that employers and works should work together to agree and review reasonable adjustments over time. When it comes to mental health, the guidance underlines that what works for one situation or employee, may not work for another. Furthermore, what works at one point in time, may not work in the future if the mental health condition changes. In other words, a flexible approach needs to be taken. The benefit of doing so is that the right adjustments will help keep the employee in work, enabling them to work safely and productively.

Although the guidance is non-binding, it would be sensible for employers to follow it when dealing with employees with mental health conditions. Being able to demonstrate compliance with the recommendations will put employers facing claims of failure to make reasonable adjustments in the best possible position to defend them.

Examples of reasonable adjustments for mental health

The guidance sets out a non-exhaustive list of examples of adjustments that can be made for those with mental health conditions. These include:

- **Changing someone's role and responsibilities** – for example, reviewing tasks and deadlines to help someone have a reasonable workload while managing their mental health.
- **Reviewing working relationships and communication styles** – for example, agreeing a preferred communication method to help reduce anxiety such as avoiding

spontaneous phone calls.

- **Changing the physical working environment** – for example, relocating someone's workspace to a quieter area to reduce sensory demands.
- **Policy changes** – for example, being flexible with "trigger points" for sickness absence management, so that someone is not disadvantaged by mental health related absence.
- **Providing additional support** – for example, providing regular check ins to help with prioritising work and structuring the working day.

Requesting reasonable adjustments for mental health

The legal duty to make reasonable adjustments requires employers to proactively identify and make adjustments to remove or reduce disadvantage for disabled people. Nevertheless, the guidance encourages employees to who feel they need an adjustment to open a discussion with their employer.

The guidance offers lots of tips on how employees can best prepare for such discussions. Before making a request, the guidance suggests that employees consider the following issues:

- **Think about how their mental health affects their work** – for example, are there times in the day or week that are better or harder?
- **Think about how work affects their mental health** – for example, are there some tasks that cause anxiety or worry?
- **Talk to a friend or family member** – this can help the employee to better recognise patterns in their own behaviour, especially when they are experiencing mental health problems. For example, the employee can ask for views on when they seem confident, settled and happy and when they do not.
- **Look through examples of reasonable adjustments** – looking through examples (including the examples contained in the guidance) may give the employee ideas of the kinds of things that might be possible and could help them.
- **Get advice from an occupational health professional** – occupational health professionals can provide expert advice on what adjustments might be suitable for the employee.

Having done this preparation, the guidance recommends that employees have a conversation and agree a plan with their employer. It also recommends that any adjustments are trialled and monitored over time and that a record is kept of any changes made. Beyond this, the guidance recommends keeping adjustments under review and holding regular follow up

meetings to discuss how the adjustment is working for both parties. These meetings could be weekly, monthly or less frequently.

Responding to requests for reasonable adjustments for mental health

The guidance also offers pointers for employers on how to respond to requests for reasonable adjustments for mental health. In terms of preparation, it recommends that the person having the discussion with the employee considers any relevant organisational policies relating to mental health, absence and reasonable adjustments. It also urges the person to reflect on how confident they feel talking about mental health at work (and consider undertaking training if necessary) and to try to put themselves in the employee's position and think about what is going on for them.

In terms of identifying the right adjustments, the guidance recommends looking through examples of reasonable adjustments and seeking advice from an occupational health professional on what adjustments might be suitable. Possible adjustments should then be discussed in a meeting with the employee. The guidance offers a checklist of the things to be covered in any such meeting and recommends that the employee be allowed to bring a trusted person with them to take notes if desired. Once adjustments are agreed, the employer should confirm them in writing and keep them under review.

Managing employees with reasonable adjustments for mental health

Helpfully, the guidance offers specific advice to managers of employees who have reasonable adjustments in place for their mental health. This includes a checklist of practical steps that can be taken to support someone access the support they need – these are:

- Check in with the employee, ask how they are and if they need help.
- Learn to recognise changes in their behaviour.
- Try to understand how their mental health impacts them.
- Understand that adjustments might not work the first time and may need to be changed over time.
- Be flexible in your approach and respond to changing needs.
- Show ongoing support throughout any fluctuations in mental health and put in place adjustments as needed.
- Consider the needs of the employee and their team in case anything needs to change.
- Know when to ask for help from others such as HR and occupational health.

Further guidance is given on how to handle conversations about

adjustments sensitively and on the follow up steps that should be taken by managers.

Reviewing policies with mental health in mind

Finally, the guidance encourages employers to review relevant policies (such as absence policies) to make sure that they are suitable for employees with mental health problems. For example, by ensuring they use clear, accessible and empathetic language. Such policies should be clear on what needs to be done by who and when and be well understood by managers and implemented consistently by them.

It is also recommended that employers have a policy which specifically addresses reasonable adjustments for mental health. This will help make it clear how adjustments can be accessed, how managers will deal with requests and keep them under review. Such a policy could also signpost other sources of support, such as employee assistance programmes or mental health champions and outline the organisation's overall wellbeing strategy.

BDBF is a law firm based at Bank in the City of London specialising in employment law. If you would like to discuss any issues relating to the content of this article, please contact Principal Knowledge Lawyer Amanda Steadman (amandasteadman@bdbf.co.uk) or your usual BDBF contact.

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