

Title: Employing Disabled People

Reference No: NYYPCTHR19

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First Issued On: 7th April 2008 DATE (version 1.0)

Latest Issue Date: 7th April 2008

Operational Date: 20 October 2008

Review Date: April 2010

Consultation Process: Policy Review Group, SMT, Directors, JNCC and LNC

Policy Sponsor: Stephen Dean

Ratified and Approved by: Governance Committee

Distribution: All staff in line with Policy on Policies

Compliance: Mandatory for all permanent & temporary employees, contractors & sub-contractors of North Yorkshire & York PCT

Equality Statement: This policy has been subject to a full equality impact assessment

CHANGE RECORD			
DATE	AUTHOR	NATURE OF CHANGE	VERSION No
15/04/08	Christine Brown Equality and Diversity Employment Lead	New Policy	1.00



EMPLOYING DISABLED PEOPLE**1 PREAMBLE**

This Policy is made between NYYPCT and the recognised staff side organisations, using the mechanisms of the JNCC and LNC. It will remain in force until superseded by a replacement Policy, or until terminated by either management or staff side, giving no less than six months notice. The purpose of the notice to terminate the Policy is to provide the opportunity to for both parties to renegotiate a replacement Policy. Withdrawal by one party, giving no less than six months notice, will not of itself invalidate the agreement. If agreement cannot be reached on a revised policy, then the matter will be dealt with through the PCT's Grievance Procedure.

2 INTRODUCTION

The Disability Discrimination Act 1995 and the Amendment Regulations 2003 (DDA) make it unlawful to discriminate against a disabled person on the grounds of his or her disability in relation to recruitment, promotion, training, benefits, facilities and services, terms and conditions of employment and dismissal.

Under the Act, disabled people are also protected from harassment relating to their disability.

A disabled person is a person who has or has had a disability which falls within the definition of a disability as stated in the DDA.

3 SCOPE

The Act covers employees, potential employees, and former employees. Where the PCT acts as a 'Placement Provider' for those seeking or undertaking work placements, whether paid or unpaid, disabled people are covered by the Act and the duty to make reasonable adjustments applies.

4 RESPONSIBILITIES

All employees of the PCT are requires to adhere to the requirements of the Disability Discrimination Act and to apply this Policy fairly.

5 TRAINING AND AWARENESS

Staff will be able to access this Policy via the PCT intranet in the Human Resources Policies section and by request directly from the Human Resources Department. Equality and Diversity training is mandatory for all staff in the PCT and is available on the PCTs Managed Learning Environment as an E-learning package.

6 DIVERSITY STATEMENT

The Trust recognises the diversity of the local community and those in its employ. Our aim is therefore to provide a safe environment free from discrimination and a place where all individuals are treated fairly, with dignity and appropriately to their need. The Trust recognises that equality impacts on all aspects of its day to day operations and has produced an Equality Policy Statement to reflect this. All policies and procedures are assessed in accordance with the Equality Screening Toolkit, the results for which are monitored centrally.'

7 POSITIVE ABOUT DISABLED PEOPLE

The Disability Symbol (two ticks) is a recognition given by Jobcentre Plus to employers who have agreed to meet five commitments regarding the employment, retention, training and career development of disabled employees by taking the following action:

- Interview all candidates with a disability who meet the essential criteria for a job vacancy and consider them on their abilities
- Ensure there is a mechanism in place to discuss, at any time, but at least once a year, with disabled employees what both parties can do to make sure disabled employees can develop and use their abilities
- Make every effort when employees become disabled to make sure they stay in employment
- Take action to ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work
- Each year, review the five commitments and what has been achieved, plan ways to improve them and let employees and Jobcentre Plus know about progress and future plans

8 THE DISABILITY DISCRIMINATION ACT

The Disability Discrimination Act covers employees, potential employees, and former employees. Where the PCT acts as a 'Placement Provider' for those seeking or undertaking work placements, whether paid or unpaid, disabled people are covered by the Act and the duty to make reasonable adjustments applies.

The Act states "a person has a disability... if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on his/her ability to carry out normal day-to-day activities". If an individual is to be protected under the DDA, he or she must satisfy the four main conditions (in italics) of this definition. People who have had a disability within the definition are protected from discrimination even if they have since recovered

Physical and mental impairment

Physical impairment is not defined by the DDA, but includes impairments that affect the senses, e.g. hearing or sight

Mental impairment is defined as an impairment resulting or consisting of a mental illness only if the illness is a clinically well-recognised illness. This could include

bipolar depression and schizophrenia. A clinically well-recognised illness is one that is recognised by a respected body of medical opinion. Hidden impairments are also covered such as learning disabilities, dyslexia, diabetes or epilepsy.

Normal day-to-day activities

An impairment is taken to affect the ability of the person concerned to carry out normal day-to-day activities only if it affects one of the following:

- Mobility
- Manual dexterity
- Physical co-ordination
- Continence
- Ability to lift, carry or otherwise move everyday objects
- Speech, hearing or eyesight
- Memory or ability to concentrate, learn or understand
- Perception of risk of physical danger

Disabilities controlled by medication or special aids

Generally, a person with a disability is protected by the DDA, even if he or she successfully controls or corrects his or her disability (e.g. individuals with epilepsy controlled by medication). However, an individual with a sight impairment which is corrected by spectacles or contact lenses is not protected by the DDA.

Duration of disability and other conditions

The disability could be physical, sensory or mental. It must be substantial and must last, or be expected to last, for twelve months or more.

People with severe disfigurement are also protected. They do not need to demonstrate that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities.

The Act applies to people who have conditions that may not have previously been considered a disability, e.g. kidney or heart disease when it has had a significant effect on their lives.

People with progressive conditions such as cancer, multiple sclerosis, muscular dystrophy or HIV will be covered by the act from the moment the condition leads to an impairment which has some effect on their ability to carry out normal day-to-day activities.

9 EMPLOYMENT

The DDA states that less favourable treatment is justified if, and only if, the reason for it is both material to the circumstances of the particular case, and substantial.

For example, the disabled person might be otherwise well qualified for the position, but the evidence might support a real fear that there is a clear and unacceptable health and safety risk to the disabled worker or others. In these circumstances, a qualified person should undertake a risk assessment.

For a reason to be material, the reason must be related to the circumstances of the specific case in question, and therefore, a reason which is based on stereotypes about disabled people or the effect of a particular disability will not justify discrimination on the grounds of disability, as the reason would not be material.

For a reason to be substantial, the reason must be significant to the circumstances of the specific case in question, and therefore, a reason which is minor or trivial will not justify discrimination on the grounds of disability.

The DDA also states that less favourable treatment cannot be justified where an employer is under a duty to make a reasonable adjustment, but fails without justification to do so.

The employer can only justify the less favourable treatment if it can show that such treatment would have been justified even if it had made the reasonable adjustment.

For example, an applicant with a hearing impairment is not offered a job as a receptionist because he or she will not be able to communicate over the telephone. However, if a reasonable adjustment would have enabled the applicant to communicate over the telephone (e.g. providing a telephone amplifier or some other telecommunications device), the reason for not offering the job would not have applied, and therefore, the failure to offer the applicant the job would not be justified.

The PCT is committed to treating all applicants and employees on individual merit. This applies to all aspects of employment, including recruitment, training, promotion and dismissal.

The PCT will not discriminate against people with disabilities when recruiting. Thus due care will always be taken with regard to:

- Job specifications
- Application forms
- Selection processes (including the timing of interviews and their location)
- Assessment techniques
- Terms and conditions of employment offered.

All areas of employment are covered including:

- The terms and conditions of employment
- Induction
- Promotion, transfer, training or any benefit or opportunities
- Occupational pensions
- Dismissal

Discrimination in any of these areas is unlawful.

Post-termination discrimination is also unlawful; the Act protects former employees from Harassment or detriment (e.g. in the giving of references).

10 DUTY TO MAKE REASONABLE ARRANGEMENTS *North Yorkshire and York*

Where any provision, criteria or practice (e.g. recruitment and selection procedures) made by or on behalf of the PCT, or any permanent or temporary physical feature of premises (e.g. exit from or access to a building) place an individual with a disability at a substantial disadvantage in comparison with persons who are not disabled, the PCT is legally obliged to make a reasonable adjustment.

Under its duty of care the PCT will consider, on a continuous basis, what reasonable adjustments might need to be made to overcome any detriments, making any changes which are reasonable.

Examples of these may include:

- Making adjustments to PCT premises
- Re-allocation of non-key duties to others
- Redeployment (with training where applicable)
- Altering working hours
- Assigning him or her to a different place of work
- Allowing him or her to be absent during working hours for rehabilitation, assessment or treatment
- Giving or arranging for training or mentoring, for the disabled person or any other person
- Acquiring or modifying equipment
- Modifying instructions or reference manuals
- Modifying procedures for testing or assessment
- Providing a reader or interpreter
- Providing supervision or other support

What will be reasonable will depend upon the individual circumstances. The following factors will be considered by the PCT when determining whether an adjustment is a reasonable adjustment:

- The effectiveness of the step in preventing the disadvantage
- The extent to which it is practicable for the PCT to make the adjustment
- The financial and other costs which would be incurred by the PCT in making the adjustment and the extent to which making it would disrupt any of the PCT's activities
- The extent of the PCT's financial pressures and other resources
- The availability to the PCT of financial or other assistance with respect to making the adjustment.
- The nature of the PCT activities and the size of its undertaking

Note: There is no statutory limit on the cost of a reasonable adjustment.

The manager (with advice from HR) can decide what adjustments it is feasible or practical to implement.

11 COMPLAINTS

Any individual with disabilities who feel the PCT has discriminated against them should initially raise this through the PCT's Grievance Procedure.

Any disabled person who feels they have been subjected to harassment in the workplace should report the matter through the PCT Harassment Policy.

12 FURTHER INFORMATION AND ADVICE

Regardless of job role, should employees require additional information or advice on any aspect of the employment of people with disabilities they can contact the Human Resources Department or Trade Union Representative.

The Access to Work Scheme Job Centre Plus is also available to provide expert advice and support. The Scheme may be able to offer assistance with adaptation to premises, communication support at interview, special aids and equipment, support workers and travel to work

13 REVIEW

This policy will be reviewed in two years time. Earlier review may be required in response to exceptional circumstances, organisational change or relevant changes in legislation or guidance.

14 MONITORING

The application of this Policy will be monitored through the Human Resources Department sickness monitoring and grievance procedures