

Disability

Your rights and responsibilities

This leaflet provides a summary of the disability discrimination provisions of the Equality Act 2010 and the limited duties scheme introduced in 2015. Further advice can also be obtained from your Federation office or representative.

Definition of disability

The Equality Act 2010 defines a disability as a physical or mental impairment that has a substantial and long term adverse effect on a person's ability to carry out normal day to day activities. However, persons with HIV, multiple sclerosis or cancer are deemed to be disabled even if the medical condition does not have an impact on a person's ability to carry out normal day to day activities. The employment provisions of the Act also apply to a person who previously had a disability or someone who continues to experience debilitating effects as a result of treatment for a past disability.

Direct discrimination

Direct disability discrimination occurs where, because of disability, a Force treats an officer less favourably than it treats another officer or would treat another officer. It also covers instances where the less favourable treatment is because of an officer's association with someone who has that characteristic (for example, he or she has a disabled child), or because the officer is wrongly perceived to have a disability. Direct disability discrimination cannot be justified.

Indirect disability discrimination

Indirect disability discrimination occurs if a provision, criterion or a practice (PCP) that a force applies puts disabled people at a particular disadvantage compared with people who do not have that disability, that puts the officer in question at that disadvantage and cannot be shown to be justified as a proportionate means of achieving a legitimate aim.

Discrimination arising from a disability

This occurs when a disabled officer is treated unfavourably because of something arising in consequence of their disability (not the disability itself) and the unfavourable treatment cannot be justified as a proportionate means of achieving a legitimate aim. Discrimination arising from disability will not be unlawful if the Force can show that it did not know, and could not be reasonably expected to know, that the officer was disabled.

Reasonable adjustments (also called workplace adjustments in the limited duties scheme)

The duty to make reasonable adjustments arises when a PCP applied by a force, or physical feature of work premises, or the absence of an auxiliary aid puts a disabled officer/job applicant at a substantial disadvantage when compared with those who are not disabled. In such cases, Forces should take such steps as it is reasonable to have to take to avoid that disadvantage, with failing to do so amounting to discrimination. It is therefore lawful to treat disabled people better than non-disabled people. The obligation to make reasonable adjustments only protects disabled people and there is no right to have adjustments made e.g. to care for a disabled relative or child.

When deciding whether an adjustment is reasonable a force should consider: the extent to which an adjustment would alleviate the disadvantage, the practicalities, cost and potential disruption of making the adjustment and whether financial or other assistance is available. Adjustments should be made with the intention of retaining an officer in his/her role. Adjustments could include providing equipment, adapting the workplace, duties or hours of work, permitting absence for treatment or rehabilitation and providing a supportive working environment including training of colleagues. Where such



adjustments are not available, or would not alleviate the disadvantage, other roles can be explored, which can include moving a non-disabled officer from a role to make way for a disabled officer. A failure to make a reasonable adjustment cannot be justified by a force, unless it can be shown that the Force did not know and could not reasonably be expected to know of the disability.

Access to work

Access to work (AtW) is a scheme run by Jobcentre Plus. AtW can provide expert advice tailored to an individual's needs. They may also be able to provide financial support to enable a disabled person to stay in work. Only the disabled person can apply to AtW for support.

Limited duties

The limited duties scheme came into effect on 1 April 2015. Details can be found in Annex EE of the Police Regulations 2003. The scheme is designed to help forces deploy each officer to the fullest possible extent commensurate with their skills and experience and to support the overall operational resilience of each force, whilst also having regard to the force's statutory duties under equalities legislation.

'Limited duties' is the term used to describe some circumstances in which officers may be unable to undertake the full range of police duties. There are three categories of limited duties: recuperative duties, adjusted duties and management restricted duties.

Adjusted duties is defined as duties falling short of full deployment, in respect of which workplace adjustments (including reasonable adjustments under the Equality Act 2010) have been made to overcome barriers to working. To be placed on adjusted duties an officer must be:

- attending work on a regular basis;
- working the full number of hours for which s/he is paid (in either a full time or part time role)

Therefore it is not the case that every disabled officer will be placed on adjusted duties. Forces must ensure the scheme is implemented on a case by case basis, balancing the needs of the individual and the needs of the force. For more information on limited duties see your branch board for the following documents:

- Limited duties national guidance, published under HOC 010/2015
- JBB Circular 16/2015
- PFEW FAQs

Career development

A disabled officer should not be prevented from applying for other roles, undertaking training or seeking promotion. If necessary, reasonable adjustments should be made to facilitate this. For example, the limited duties scheme should be used by forces as a positive means of retaining officers with valuable skills and experience in the workplace.

Performance review

The performance of all officers should be measured by transparent, objective and justifiable criteria using procedures that are consistently applied and against standards that are relevant to the role. A disabled officer should be assessed with due regard to his or her disability. The PDR or Assessing and Recognising Competence (ARC) assessment should reflect any restrictions they may have. When selecting those activities to include for assessment the selection must not place the disabled officer at a disadvantage.

Health and Safety

If making a particular adjustment would increase the risk to health and safety of any person (including the disabled worker in question) then this is a relevant factor in deciding whether it is reasonable to make that adjustment. Suitable and sufficient risk assessments should be used to help determine whether such risk is likely to arise. However, forces should not use health and safety as a reason to remove a disabled officer from his or her role without thorough consideration of all the circumstances.

Sickness absence

If an officer suffers unfavourable treatment because they have been absent from work due to his or her disability, this may be discrimination arising from a disability unless the Force can justify the treatment. The Force could consider excluding disability related sickness absence from the attendance management scheme or criteria for procedures such as assessment and selection for promotion as a reasonable adjustment. They could also allow a period of disability related leave; for example, time off to undergo medical treatment.

Sick pay

In most cases, an officer on sickness absence is entitled to full pay for six months and then half pay for six months. After a year's absence there is no entitlement to pay while on sick leave. A chief officer can exercise discretion to maintain an officer on full pay instead of half or no pay, or half pay instead of no pay.

Particular circumstances where this can be considered are set out in PNB Circular 05/01:

- where the incapacity is directly attributable to an injury or illness that was sustained or contracted in the execution of duty;
- the illness may prove to be terminal;
- the officer has been referred to a selected medical practitioner for consideration of permanent disablement.
- it would be reasonable to extend sick pay to allow (further) reasonable adjustments to be made to enable the officer to return to work.

There is however no guarantee that discretion to extend sick pay will be exercised in an officer's favour.

Medical retirement

Disablement under the Police Pension Regulations is different from the definition of disability under the Equality Act, and occurs if an officer is permanently unable to perform the ordinary duties of a member of the force as a result of a physical or mental condition.

Medical retirements are the responsibility of the local policing body after advice from a selected medical practitioner. They should retain officers who are able to make a valuable contribution and should not retire on medical grounds unless necessary.

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