

# Human Resources

## DRAFT DISABILITY POLICY

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South Yorkshire  
Fire & Rescue  
WORKING FOR A SAFER  
SOUTH YORKSHIRE

# DISABILITY POLICY

## INTRODUCTION

1. This policy regarding disability and impairment issues will ensure that South Yorkshire Fire & Rescue (SYFR) adopts the sound employment practices that all existing and potential employees expect. It demonstrates a high level of commitment to disabled service users, potential employees and employees. It also shows a proactive and comprehensive approach to implementing the requirements of the Disability Discrimination Act 1995 (DDA).
2. The aim of this policy is to ensure the following:
  - To ensure employees, potential employees and ex-employees are treated fairly and without discrimination on the basis of disability. The DDA makes it unlawful to discriminate against people who have a disability or those with caring responsibilities for a disabled person<sup>1</sup>.
  - The creation of a working environment free from discrimination and harassment.
  - A commitment to train, promote and develop employees on merit.
  - To ensure the laws governing equal opportunities for all disabled people are upheld.
3. As a member of the Dignity at Work Partnership<sup>2</sup>, SYFR is committed to promoting a positive working environment where the dignity and respect, to which all employees are entitled, is not undermined. No employee should be treated less favourably on the grounds of race, gender or gender reassignment, disability, sexual orientation, religion or spiritual belief, colour, nationality, national or ethnic origin, marital/parental status, family ties, trade union or political belief, hours worked, or any other reason, either directly or indirectly.

## WHAT COUNTS AS A DISABILITY IN LAW?

4. The definition of 'disability' for the purposes of disability discrimination legislation is very broad and is such that a wide range of conditions, that managers may not necessarily perceive as disabilities, will in fact be covered.
5. A person is classed as disabled in law if they have a *'physical or mental impairment that has a substantial and long-term, adverse effect on his or her ability to carry out normal day to day activities'*<sup>3</sup>.
6. 'Long term' in this context means twelve months or more. So an individual whose disability has lasted twelve months, or is expected to last twelve months, is potentially protected. Someone with a terminal condition will be classed as disabled, even if their prognosis is that they will live for less than twelve months.

<sup>1</sup>One can be a victim of unlawful discrimination on the grounds of disability, without being disabled oneself; what is important is that a disability is used as a reason to treat someone less well. Therefore if a carer is treated less favourably because of their carer status, they can rely on the DDA for protection.

<sup>2</sup> The Dignity at Work Partnership is a partnership between the Government, Unite (the UK's largest union) and major public and private sector organisations. For further information on the Partnership, see [www.dignityatwork.org](http://www.dignityatwork.org)

<sup>3</sup>The Disability Discrimination Act (DDA) 2005.  
[http://www.opsi.gov.uk/Acts/acts2005/ukpga\\_20050013\\_en\\_1#Legislation-Preamble](http://www.opsi.gov.uk/Acts/acts2005/ukpga_20050013_en_1#Legislation-Preamble)

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7. There is no need for an employee to be registered as disabled, or to be claiming disability living allowance, to qualify for protection under the act.
8. Any activity that people do on a regular basis in their everyday life, as opposed to at work, is classed as a 'normal day to day activity'. Therefore if an individual cannot perform certain day-to-day activities, or can only do so with difficulty, they may qualify for protection under the act. The concept of 'normal day to day activities' is defined further as meaning that the impairment, or disability, must have an effect on:
  - Mobility
  - Manual dexterity
  - Physical coordination
  - Continence
  - Ability to lift, carry or otherwise move everyday objects
  - Speech, hearing or eyesight
  - Memory or ability to concentrate, learn or understand
  - The perception of the risk of physical danger

The key thing is not the impairment, or disability itself, but its effect/s. Impairments such as migraines, dyslexia, dyspraxia, asthma and back pain can count as a disability if the adverse effect/s on the individual is substantial (i.e. more than '*minor or trivial*') and long-term.

9. Progressive conditions such as muscular dystrophy, Alzheimer's disease and Parkinson's disease are covered under the definition of disability as soon as the condition is diagnosed and the person's 'normal day to day activities' are affected in any way, whether substantial or not, so long as, in the future, the adverse effect is more likely than not to become substantial.
10. Cancer, multiple sclerosis or HIV are automatically deemed as disabling, whether or not symptoms are being experienced at the time in question and regardless of whether it is likely that the effects of the condition will, in time, become substantial.
11. An impairment that consists of a severe disfigurement is treated as having a substantial adverse effect on an individual's ability to carry out normal day to day activities.
12. Conditions that are intermittent, or that fluctuate in their effects, will entitle the person to protection at all times, (even if at a particular point in time the condition is in remission), provided that the condition is likely to recur.
13. 'Mental impairment' can mean an impairment resulting from, or consisting of a mental illness. In addition to clinically recognised mental illnesses such as schizophrenia and bi-polar disorder, other conditions such as depression and anxiety are covered, provided that their effect/s on the individual are substantial and long-term. Many stress related illnesses, regardless of whether they are precisely diagnosed, are therefore capable of amounting to a disability. Learning difficulties and other conditions such as dyslexia and dyspraxia may also amount to a disability. Further information on dyslexia and dyspraxia and the support available to employees is available in the Dyslexia and Dyspraxia Policy, available on the intranet or via the Transactional HR team.

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14. The cause of an illness or other condition is irrelevant to the assessment of whether or not it amounts to a disability. Therefore, the impairment or disability may either result from an illness, or consist of an illness. If an employee was to claim disability, they do not, therefore, need to identify the cause of their impairment or disability, or prove that a recognised illness underlies it. The question of whether or not they are disabled will be judged according to the effects that the impairment has on their day-to-day life.
15. A condition may amount to a disability even, if as a result of medication or another form of support such as a hearing aid or prosthetic limb, the person experiences no adverse effects on a day-to-day basis. The question that determines whether or not an employee is disabled is how the condition would affect the employee if they did not take their medication, or use the support.
16. There are some conditions that are specifically deemed not to be a disability under the DDA. These include alcohol addiction, addiction to illegal drugs and hay fever. A small number of mental conditions are also excluded. These are:
  - A tendency to set fires
  - A tendency to steal
  - A tendency to physically or sexually abuse others
  - Exhibitionism
  - Voyeurism.

### WHAT IS DISABILITY DISCRIMINATION?

17. SYFR has a legal duty not to treat an employee with a disability or impairment unfavourably:
  - Directly on the grounds that they have a disability
  - or
  - On grounds related to disability, unless justified
18. Unfavourable treatment can take many forms. Examples include:
  - Rejection for employment or promotion
  - Exclusion from training opportunities
  - Less favourable terms and conditions
  - Removal of duties (except where a condition would exclude certain duties, i.e. operational duties, on Health and Safety grounds after all reasonable adjustments have been explored) or a transfer to less interesting or less responsible work without good cause or reason
  - Exclusion from contractual benefits or non-contractual perks
  - Dismissal or selection for redundancy
19. Examples of what constitutes direct discrimination and disability-related discrimination can be found in Appendix A.

### THE SOCIAL AND MEDICAL MODELS OF DISABILITY

20. There are two different ways of explaining what causes disadvantage to people with a disability:

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### The Medical Model

The medical model is based on the view that a person's inability to participate fully in 'mainstream' society is seen as a direct result of having an impairment or disability, not as a result of the features of society which can be adapted or adjusted.

### The Social Model

The social model is based on the understanding that disadvantage and social exclusion is not the inevitable result of a person's impairment, but rather stems from attitudinal and environmental barriers. The social model explains that barriers and exclusion are not created by an individual's disability or impairment, but are created by society's reaction to it, which means it is possible to remove them such barriers.

These barriers could include:

- Prejudice and stereotypes
  - Inflexible organisational policies, procedures and practices
  - Inaccessible information
  - Inaccessible buildings
  - Inaccessible transport
21. SYFR has chosen to follow the social model of disability and is dedicated to working with prospective and existing employees in order to remove any barriers to their employment with the organisation.

## RECRUITMENT AND SELECTION

22. When recruiting and selecting employees, SYFR is dedicated to ensuring the consistent and unbiased selection of the best candidate for the post.
23. It is not unlawful for SYFR to ask job applicants whether they have a disability, however, those involved in the recruitment of new employees should be careful to ensure that they are not inadvertently deterring job applicants by asking about disability, impairment or long-term health issues. It should be made clear at all stages of the recruitment and selection process that reasonable adjustments will be made, wherever possible, to support disabled candidates. Where these are requested, every effort will be made to ensure that they are provided. Adjustments could include, for example, providing a sign language interpreter (where required), or providing any selection test to be taken under different conditions or produced in different formats.
24. The following points highlight areas of particular relevance to candidates with disabilities within the recruitment and selection process:
- In designing person specifications for posts, SYFR will outline the essential and desirable criteria for post. Care will be taken to ensure that these criteria are objective and that they do not unjustifiably place a disabled person at a disadvantage in the selection process
  - Vacancies will be advertised in a wide range of media, as appropriate to the type of post
  - The text of all advertisements, along with further particulars and application forms will be made available in electronic format, Braille, tape, disk and in large print on

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request. Information about these formats can be obtained from the Human Resources Recruitment and Selection team

- All shortlisted candidates will be asked if they have any additional requirements or need any adjustments to be made at interview or other parts of the selection process.
  - All selection procedures will assess candidates on their suitability for the post, according to the objective criteria set out in the person specification
  - At interview, the panel will take a positive and flexible approach to a candidate's need for reasonable adjustments to undertake the duties of the post. The panel will not make assumptions about an individual's ability to perform certain tasks. They will, however, give the opportunity to identify adjustments that they, or SYFR, would need to make in order to perform the duties to the required standard
  - All successful candidates for posts at SYFR are required to complete a confidential pre-employment health questionnaire and may be required to attend a medical examination with Occupational Health, regardless of whether they are disabled or not
  - Candidates will be invited to discuss any required adjustments, recommended by Occupational Health, prior to taking up the post
  - In exceptional circumstances, it may not be possible to find a reasonable adjustment to allow the employment of an otherwise suitable candidate. However, such a decision would only be made after taking specialist advice. Further information on reasonable adjustments can be found in Appendix B
25. As an accredited user of the Two Ticks Disability Symbol we are dedicated to meeting the following five commitments with regard to the employment, retention, training and career development of disabled people:
- To interview all disabled applicants who meet the minimum criteria for a job vacancy and consider them on their abilities. See paragraph 28 - 29 for further information
  - To discuss with disabled employees, at least once a year, what can be done to ensure they use and develop their abilities – this will be done through the existing PDR process, though disabled employees are advised to remain in regular dialogue with their line managers should they have any issues relating to their disability or impairment
  - To make every effort to ensure that if an existing employee becomes disabled they stay in employment
  - To ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work. This will be achieved through equality and diversity training for all employees and monitored through the annual PDR process

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- To review the five commitments and what has been achieved annually, plan ways to improve on them and inform employees and Jobcentre Plus about progress and future plans
26. To ensure that as an organisation we are attracting the best possible candidates for vacancies, advertisements must use language that is positive. When advertising externally, the role must be advertised through more than one medium and display the accredited 'two ticks' symbol in order to encourage the application of disabled individuals.
  27. It is essential that the requirements of the role are not inflated and subsequently deter applications from prospective disabled candidates.
  28. All disabled applicants for support staff and non-operational uniformed roles, who meet the essential criteria, will be offered an interview. All disabled applicants for operational firefighter roles, who meet the requirements of the National Firefighter Selection process, will be progressed through the recruitment process.
  29. All recruitment activity must ensure that reasonable adjustments are made where required for disabled applicants. Examples include:
    - Additional time for ability tests for individuals with dyslexia
    - Where an applicant has to write detailed text, consideration should be given to allow an individual to use a dictaphone to avoid potential adversity for those with visual impairment or dyslexia etc
    - Individuals with hearing impairments may require a sign language interpreter to be present, but it is important to note that not all individuals who are deaf use sign language, so this should be confirmed in liaison with the individual beforehand.
  30. When appointing an individual with a disability, reasonable adjustments to the workplace should be made prior to the commencement of employment where possible. When a disabled individual is appointed, the line manager and Human Resources should meet with the individual prior to commencement to discuss reasonable adjustments, initiate a risk assessment and to discuss involvement of external organisations such as Access to Work. At this meeting the manager should also discuss integrating the new employee with the team. As the individual learns their role, further adjustments may be needed. These should be reviewed and addressed swiftly.
  31. There may be cases where information provided to the manager is limited due to confidentiality issues but, where possible, this should be avoided to promote an open and honest environment in order to assist in the adjustment process.

## DISCLOSURE AND CONFIDENTIALITY

32. In accordance with the DDA, any information given to SYFR regarding a disability will be treated in confidence.
33. Once appointed, individuals will be asked whether they wish their colleagues to be informed of their disability and their wishes will be respected.

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However, unless line managers are allowed to have the necessary information, it may not be possible to put in place the required adjustments, nor to anticipate and make provisions for future need. Completion of the Equality and Diversity Monitoring Form is in complete confidence and does not constitute disclosure of a disability to SYFR. Therefore the employee should ensure that they disclose their disability, if they wish, and not assume that colleagues or managers are aware of their disability. The Occupational Health Unit will discuss disability issues and employees are able to self-refer to the Occupational Health Nurse. Further information on confidentiality of such issues can be found in the Confidentiality Policy, available on the intranet, or via the Transactional HR team.

### MONITORING AND REVIEW

34. The HR Management Information team confidentially monitors the number of disabled people who apply for posts, those who are shortlisted, selected and those who are existing employees. Knowing the proportion of disabled people at various levels of the organisation, and at various stages in relation to the recruitment and selection process, can help determine where practices, policies and procedures need to be improved. This information is collected on a strictly confidential basis as part of the Equality and Diversity Monitoring process. Any personal information which may identify an individual given on the Equality and Diversity Monitoring Form, will never be divulged to anyone, either internally or externally, without an individual's express permission.

### THE DISABLED STAFF GROUP

35. SYFR has a Disabled Staff Group, which is open to disabled employees, carers and others affected by disability. The group is able to act as a support mechanism to employees and also advises the organisation on issues relating to disability. The group is consulted wherever policy, process or procedure may have an impact on employees with a disability or impairment.
36. The key elements of the Disabled Staff Group is to:
  - Provide a safe forum in which employees can discuss issues without fear of recourse to managers or colleagues
  - A means of gathering the experiences of disabled employees and carers and using them to feedback positively in order to develop policy, procedures and practices and also to help identify any training needs within the wider organisation
  - A forum for discussing or testing out ideas proposed by SYFR to improve diversity and equality in the organisation, i.e. consulting on positive action recruitment campaigns
  - A forum in which members can discuss measures to improve the delivery of services to disabled people in the wider community (for example by contributing to and consulting on Community Engagement work)
  - A means by which SYFR can inform disabled employees of issues that may affect them specifically.

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37. Information on the Disabled Staff Group is available from the Equality and Diversity team and membership of the group is open to any employee affected by disability, completely confidentially.

### **TRAINING, INDUCTION AND SUPPORT**

38. Disability awareness and equality is included as part of the equality and diversity training. Disabled employees will not be disadvantaged in their opportunities for training and development. The Equality and Diversity team, in liaison with SYFR's Training and Development Centre and if appropriate the Disabled Staff Group, can provide guidance on the adjustments and/or additional requirements (such as interpreters, large print or electronic versions of training materials) on internal training programmes and can provide advice on such provisions for external training programmes when necessary.
39. Every effort will be made to provide any other appropriate types of support for disabled employees. For example, where required, adjustments will be made to allow full participation in staff and team meetings. Further information on such issues can be obtained from the Equality and Diversity team.

### **FACILITIES / EQUIPMENT / ACCESSIBILITY OF BUILDINGS**

40. SYFR is committed to improving the accessibility of its premises and where practicable will also make adjustments to an employee's immediate working environment, for example the provision of special furniture, equipment or signage, or will endeavour to find a more appropriate location for a post where an established location is unsuitable for the employee.

### **HEALTH AND SAFETY**

41. It may be necessary, on occasion, to make special arrangements to ensure that a person's disability or impairment, or an issue related to it, does not create a hazard for themselves or for others e.g. for the safe evacuation of persons identified as being especially at risk from fire. In all cases, employees with a disability that may affect their mobility in an emergency will be consulted about their individual needs for evacuating the building in a safe and dignified manner, in advance of any emergency.
42. The health and safety of all employees is of paramount importance to SYFR, so it is important to address fears that a disabled employee, particularly if employed as an operational firefighter, will present a high health and safety risk to themselves, their colleagues or the public. A good example of this would be in the implementation of the Physical Agents (Noise) Directive (2003/10/EC). This requires SYFR to monitor the hearing levels of those exposed to noise levels 85db (A)/140Pa. However, there are two key considerations taken into account if hearing loss is suspected / identified, to resolve the impact of this upon a firefighter's ability to do their job properly:
- a. Any tests devised to analyse the possible effect of the hearing impairment on an employee's ability to do the job would be vocationally based, i.e. a functional assessment that would reflect situations and noises that a firefighter has to deal with during the course of their work. This would be carried out by the employee's line manager, Health and Safety and Occupational Health.

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- b. If a hearing loss was identified, SYFR would look at reasonable adjustments (for example, assistance in purchasing hearing aids), in order to ensure that the firefighter can remain in their job
43. It would be unlawful to take a firefighter off operational duty if such 'reasonable adjustments' had not been given due consideration. Further Information on the duty SYFR has to consider 'reasonable adjustments' can be found in paragraph 45.
44. Further information on health and safety implications of disability can be obtained by contacting the SYFR Health and Safety Advisor.

### REASONABLE ADJUSTMENTS

45. The DDA places a duty on SYFR to make reasonable adjustments to any provision, criterion or practice we apply, and to physical features of our premises, to accommodate the needs of disabled employees and job applicants. This duty arises whenever any aspect of our working practices or premises puts a disabled employee or job applicant at a substantial disadvantage in comparison with an employee, or job applicant, who is not disabled. For example these could include:
  - Permitting an employee whose condition causes them to tire easily to work part time
  - Allowing an employee with a mobility impairment to have a designated parking space close to the building entrance.
46. The question of what is 'reasonable' will depend on the circumstances, for example the practicality of a particular adjustment and the effectiveness of the steps taken in preventing the disadvantage. The employee, together with the Transactional HR team and Occupational Health should be consulted when deciding on what reasonable adjustment/s can, or should, be made. It's important, however, to remember that some people with a disability or impairment will not require any adjustments to be made, even if they are an operational firefighter.
47. As the law requires SYFR to make reasonable adjustments for disabled employees, more favourable or different treatment afforded to a disabled employee cannot be viewed as discrimination against others who are not disabled.
48. It is important for line managers to bear in mind that the requirement to make reasonable adjustments places upon them the positive duty to take the initiative and consider what adjustments may be possible and practicable to support a particular disabled employee or job applicant. Therefore, the best approach is to seek the employee or applicant's views on what changes would help them perform to the best of their ability. Usually the individual will have a better idea than anyone else on what type of support would be relevant and helpful. Through such discussions, a proper assessment of the effects of the condition on their ability to perform relevant job duties, the effect of the physical features of the workplace and the steps SYFR could potentially take to reduce or remove disadvantages, can be made.
49. The annual PDR process is the formal mechanism for employees to discuss any issues which may impact on their performance, including disability and issues with regards to reasonable adjustments. It is important to stress however that employees can discuss their disability status with their line manager, the Equality and Diversity team, the Disabled Staff Group, Occupational Health or Human Resources at anytime.

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50. Where an existing employee becomes disabled, either gradually as a result of the onset of an illness, or suddenly as a result of an accident or medical condition, the employee's line manager, together with Transactional HR and Occupational Health should consider what reasonable adjustments could be made to accommodate the employee's needs and to facilitate their continued employment with SYFR. The key objective in such cases is to take all reasonable steps to enable the employee to continue working, ideally in their substantive role, or, where there has been a period of absence, to facilitate their return to work. Further information on returning to work from absence can be found in the Absence Management Policy, which is available from the intranet, or by contacting Transactional HR.
51. In such cases, it is important that the employee's line manager adopts a positive attitude to the prospect of making adjustments with the aim of ensuring individuals can continue in their substantive role. Consideration, patience and support should be shown to the employee, and their colleagues, to help those affected by the changes adapt to the working environment and/or the change in circumstances.
52. SYFR may work in consultation with a suitable external organisation such as Access to Work or Remploy who will work with individuals and SYFR to ensure that suitable adjustments are identified and will also help to implement them.
53. Information on reasonable adjustments can be found in Appendix B. It is important that Transactional HR and Occupational Health are consulted where reasonable adjustments are being considered.
54. Any reasonable adjustment/s made will be regularly reviewed to ensure they are still appropriate.
55. If an employee was to refuse a reasonable adjustment, i.e. an operational firefighter refusing to undertake a suitable redeployed role, there could be a possibility of disciplinary proceedings due to the employee breaching the terms and conditions of their employment.
56. Where a reasonable adjustment results in reduced working hours, such as part time working, remuneration would be adjusted to reflect this contractual change.

## ABSENCE MANAGEMENT

54. Having genuine reasons for absence, including absences related to an employee's disability or impairment, does not protect the employee from dismissal under the Absence Management Policy.
55. In such cases the employer is required to make reasonable adjustments to accommodate the employee, which could include re-deployment. Further information on redeployment is available at paragraph 60.
56. In cases where an employee has been absent from work owing to a prolonged or chronic illness, he/she may require advice, support or counselling from Occupational Health at any stage before or after a return to work. The line manager should liaise with the Occupational Health Unit in order to establish an employee's particular needs following their absence. This may involve the need to modify working arrangements on a temporary or permanent basis, e.g. reduced working hours, lighter workload, alternative duties etc.

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57. It is important to take account of the circumstances surrounding each individual case when deciding appropriate action and if managers are in any doubt, they should consult with the Transactional HR Section for advice.
58. Absences due to the following conditions will be disregarded for the purposes of absence recording. These are:
- Benign brain tumour
  - Cancer/cancer screening
  - Coronary artery by pass/heart attack/heart surgery
  - Kidney failure – requiring dialysis
  - Major organ transplant
  - Motor Neurone Disease
  - Multiple Sclerosis – with persisting symptoms
  - Parkinson's disease – resulting in permanent symptoms
  - Pulmonary artery surgery
  - Stroke
  - Traumatic Head Injury

NB. Not all of these are protected by the DDA

## SUPPORT FOR EMPLOYEES WITH CARING COMMITMENTS

59. Under the DDA, someone can be a victim of unlawful discrimination on the grounds of disability, without being disabled oneself. What is important is that a disability is used as a reason to treat someone less well. Therefore if a carer is treated less favourably because of their carer status, they can rely on the DDA for protection.
59. SYFR recognises that employees may have caring commitments at some point in their working life. The caring commitment may be long term, for example caring for a disabled relative, or for shorter term, for example time to arrange care for a terminally ill relative. SYFR have a range of policies which will support those with caring responsibilities:
- Carers Leave (Time off for Dependants)
  - Flexible Working for Parents and Carers
  - Parental Leave
  - Career Break
  - Carers Policy

Further information on these policies and the support available to employees with caring commitments can be obtained from the Transactional HR team.

## REDEPLOYMENT

60. In cases where an employee is no longer able to perform their substantive role and all avenues of reasonable adjustment have been exhausted, but found to be unsuitable, SYFR will consider redeployment opportunities for the employee, subject to their being an alternative post available. The viability of this will depend on whether the alternative post is one that the employee could reasonably do – perhaps with some training – and whether the employee is willing to do it. SYFR cannot create a vacancy.

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61. In such cases, it may also be reasonable for SYFR to exempt the employee from any internal procedures that are normally applied to internal transfers, for example a requirement to undergo a competitive interview or selection test.
62. In these circumstances, there is no obligation for SYFR to maintain the employee's existing level of pay or conditions, although the employee's agreement to the transfer itself and to any contractual changes must have been obtained. A transfer without the employee's express consent would constitute a breach of contract and be unlawful disability discrimination. Therefore, in such cases, the employee will be fully consulted with about any proposed redeployment.
63. Where an employee is redeployed into a new post, SYFR will provide all required training and also a trial period will be set in order to give both SYFR and the employee the opportunity to review whether the new arrangements are working satisfactorily.

## **HARASSMENT, VICTIMISATION, DISCRIMINATION AND BULLYING**

64. The DDA states that it is unlawful for an employer to subject an employee to harassment, victimisation, discrimination or bullying for a reason that relates to the employee's disability. The SYFR Dignity at Work Policy states that the organisation will not tolerate harassment, victimisation, discrimination and bullying, for any reason and that appropriate disciplinary action, which may lead to dismissal, may be taken against any employee, of any grade, who contravenes this policy. The Dignity at Work Policy is available via the intranet or by contacting a member of the Transactional HR team or the Equality and Diversity team.
65. To help prevent a disabled person being harassed, victimised, discriminated against or bullied in the workplace, line managers have a responsibility to ensure that their team is aware of the Dignity at Work Policy and the types of behaviour that are unacceptable. If a manager becomes aware of any behaviour that may contravene the Dignity at Work Policy, they should take immediate action to stop it and should consider whether Equality and Diversity training is required or whether a meeting with their team, reinforcing the Dignity at Work Policy is necessary. If the instance of harassment, victimisation, discrimination or bullying is serious enough to warrant more formal action, the manager should implement the formal disciplinary process. Further guidance on disciplinary procedure can be found on the intranet or via the Transactional HR team. All formal disciplinary action should be undertaken in liaison with the Transactional HR team.
66. Any dignity at work issue relating to discrimination must be reported, via Transactional HR, to the Equality and Diversity team for monitoring purposes.

## **DISMISSING A DISABLED EMPLOYEE**

67. If a disabled employee is to be dismissed due to their inability to perform the job, it should be treated as a capability issue, under the Performance and Capability Procedure. In these instances, the dismissal may give rise to both a claim for unfair dismissal and a claim for disability discrimination. Therefore, it is important that, as with any action that may ultimately lead to dismissal, that the correct procedures are followed and that the process is managed by the Transactional HR team.

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68. To succeed in defending a claim for disability discrimination following a dismissal, SYFR would have to convince an Employment Tribunal that:
- There were no further adjustments that could reasonably have been made, or that any possible adjustments would not have supported / helped the employee
  - That appropriate and up-to-date medical advice had been sought and considered, but was not the only grounds for making the decision
  - That prior to the decision to dismiss, the employee was given a full opportunity to put forward representations about their condition, its effects and their abilities
  - That the dismissal was a course of action that is justified on grounds that were material and substantial and not purely based on the actual disability or impairment itself.
69. SYFR would also need to demonstrate that, as with any dismissal, the correct dismissal procedures were followed. This reiterates the importance of line managers liaising with Transactional HR, Occupational Health and, where appropriate, the Equality and Diversity team or Health and Safety Advisor, when dealing with issues relating to reasonable adjustments and disability in the workplace.

### **Pensions and Ill-Health Retirement**

70. The interplay between the Firefighters Pension Scheme, the Local Government Pension Scheme and the DDA is a crucial and detailed area. Further information should be sought, in the first instance, from Transactional HR. Further information is also available in the Retirement policies for both Uniformed and corporate employees.

### **Further Information**

71. This policy should be read in conjunction with SYFR's Integrated Equality and Diversity Scheme.
72. Further information, guidance and advice on issues of disability can be obtained by contacting the Disabled Staff Group (via the Equality and Diversity team), the Transactional HR team, the Health and Safety Advisor, or the Equality and Diversity team.

**Examples of the distinction between direct disability discrimination and disability-related discrimination**

<p><b>Direct Disability Discrimination</b></p> <p>Direct disability discrimination is unlawful</p>	<p><b>Disability-Related Discrimination</b></p> <p>Disability-related discrimination can be lawful, as long as it's justified</p>
<p>Refusing to employ a job applicant for an administration post just because the applicant has arthritis in their hands, without establishing if they can meet the typing requirements of the job</p>	<p>Refusing to employ a job applicant where it has been established that the applicant cannot meet the required typing speeds due to the arthritis in their hands</p>
<p>Automatically rejecting a deaf applicant without considering whether reasonable adjustments could be made to allow them to perform the job in question</p>	<p>Rejecting a deaf applicant after an interview at which it was established that they would have severe difficulty performing the key functions of the job in question</p>
<p>Dismissing an employee because they have been diagnosed with multiple sclerosis</p>	<p>Dismissing an employee with multiple sclerosis, when they have had several periods of absence in a defined period, where the absence was because of their condition, without considering reasonable adjustments to support the employee</p>
<p>Dismissing an employee just because they have become disabled, for example after a stroke or an accident</p>	<p>Dismissing an employee on the grounds that they are no longer capable of working following an accident or stroke, without considering reasonable adjustments or redeployment in order to enable their continued employment</p>
<p>During the National Firefighter Selection process there are a number of candidates who have similar levels of performance in the point of entry selection tests. However, one of the candidates has epilepsy and it's decided not to employ them because it's decided that they would be too much of a risk.</p>	<p>During the National Firefighter Selection process, and following discussions with Occupational Health AND the candidate, together with an assessment of reasonable adjustments, it becomes evident that the extent of a candidate's disability or impairment would leave them unable to fulfil the requirements of the post.</p>

In contrast to the situation with direct discrimination, it is possible for an employer to justify disability-related discrimination. For example, where an employee has become unable to perform the job for which they were employed, depending on the

precise circumstances, it might be justifiable for the employer to terminate their employment, provided that it had first explored whether any reasonable adjustments could be made. The reasons put forward for justification must be both material and substantial.

Rather than just jumping to conclusions about what type in unfavourable treatment may be justified, line managers must first, in liaison with Transactional HR:

- Talk to the employee about the effects of the condition so as to assess objectively what their abilities are
- Liaise with Occupational Health, and if appropriate specialist outside agencies, as to the employees abilities and what, if any, adjustments would be beneficial
- Consider what steps can be taken to accommodate the disabled employee's needs and facilitate satisfactory job performance
- Adopt an open-minded, objective and supporting approach.

## Reasonable Adjustments

**DO** take a positive approach towards supporting the employee by assessing thoroughly what adjustments could be reasonably made

**DO** discuss the situation fully and openly with the employee and seek his or her views on what changes to working practices, or physical alterations, might be helpful to the employee

**DO** make a full and proper assessment of the employee's abilities

**DO** seek medical advice from Occupational Health and, if necessary, outside agencies, about the effects of the employee's condition, and their abilities

**DO** give full and fair consideration to all reasonable possibilities, ensuring that the employee is consulted fully on what adjustments they feel would be beneficial to them

**DON'T** view the employee as being a nuisance or hindrance to the work of the team or wider organisation

**DON'T** make assumptions about the employee's abilities, or about what they would find helpful

**DON'T** rush into any decision in respect of an employee who has become disabled. It is important to give proper consideration to all of the circumstances

**DON'T** overlook the employee's skills, experience and qualities

## Examples of Reasonable Adjustments

- The list of reasonable adjustments that SYFR can make to accommodate the employee is infinite and will always be based upon individual circumstances, with the key always being what is 'reasonable' in the circumstances. However, the following table sets out some possibilities. Adjustments can be agreed on a temporary or permanent basis. It is important that the Transactional HR team, Occupational Health, specialist external agencies and, if necessary, the Health and Safety Advisor, are involved in the process of identifying reasonable adjustments for employees.
- Transferring the employee to another job that involves lighter work, provided that the employee consents to such a move and that there is a position available for which they meet the minimum criteria.
- Adjusting the duties of the job, for example exempting an employee with a back condition from the elements involving physical work as long as there are sufficient tasks within the job description for the role.
- Changing the method of doing a job, for example allowing an employee who cannot drive on account of epilepsy to use taxis for work-related travel

- Changing the place of work of an employee, for example moving an individual with limited mobility to a ground floor location, or allowing home working for part of the week
- Adjusting procedural requirements, for example allowing an employee with a recurring illness to have higher levels of sick leave than would usually be acceptable
- Modifying instructions or reference manuals, for example providing them in Braille
- Providing a reader or interpreter, for example for someone with a hearing or visual impairment
- Providing additional or special supervision, for example for someone with learning difficulties
- Modifying premises, for example widening a doorway to allow access to a wheelchair user, or relocating door handles or shelves for someone who has difficulty reaching
- Altering the hours of working or training, or permitted a more flexible working pattern
- Allowing an employee to take a period of disability leave (would be taken as unpaid special leave)

### **Reasonable Adjustment Case Studies**

1. An employee with dyslexia asks for some training and support in enable them to complete reports and other written information completely. There is a wide range of software available that can help with dyslexia. There is also training available to help people to manage this type of disability. Help towards the costs and arranging for this training can be obtained through the local job centre disability employment advisor and the Access to Work scheme. This adjustment is likely to be seen as reasonable, so therefore SYFR may have a duty to make it.
2. A woman applies to join a Fire and Rescue Service (FRS) as a wholetime firefighter. She has always been good at sport and physical activity and enjoys climbing in her spare time. However, she has diabetes and has to wear glasses to correct her eyesight. She passes all the physical tests, but after her medical she is told that the Fire and Rescue Service cannot recruit her as she has diabetes and would be a danger to herself and to her colleagues.

The woman is obviously a capable and responsible person and meets the physical requirements. The FRS' refusal to recruit her because of her diabetes amounts to a blanket ban, which is unlawful. What the FRS should have done is undertake a full risk assessment, considered whether her disability would pose any real risk in an operational environment and then looked at what reasonable adjustments could have been made. The assessment must treat her as an individual and involve her fully, as she is likely to be the best person to understand her condition. Only after the above had been completed,

and all avenues of adjustment had been exhausted without success, might the FRS be in a position to legally refuse her application.

3. A man applies to join a FRS to work in control. He has a history of schizophrenia which is controlled by medication. He declares this on his application form. The Service decides not to ask him to continue with the process and undertake the selection tests, as they feel that the job make might his disability worse.

Firstly, the FRS is making a generalised decision about a disabled person without knowing anything about the individual's condition. This is likely to be unlawful. The FRS may also be assuming that the applicant has not given any thought to the issues that his condition might raise if he was to get the job. The FRS should have consulted the applicant individually about issues of concern and sought to ensure that all options around making reasonable adjustments were taken up where possible.

It is important to liaise with Transactional HR and the Occupational Health Unit when considering issues regarding reasonable adjustment/s.

Further examples, featuring real-life cases on a variety of disability issues from FRS' nationally, are available from the HR Policy and Projects team.