



# **Disability, Discrimination and Reasonable Adjustments:** Guidance for Employers, Employees and Occupational Health professionals

Version 1

[som.org.uk](http://som.org.uk)



## Summary

---

This guidance supports employers, employees and occupational health professionals in understanding their responsibilities under the Equality Act 2010, including how disability is assessed and how reasonable adjustments should be identified and evaluated. It also explains that while adjustments should be considered wherever they can alleviate disadvantage, there are circumstances in which they may not be feasible due to safety, operational or sustainability constraints, or disproportionate burden. In addition, the guidance provides clear principles for managing long-term absence fairly and lawfully, ensuring decisions are informed by clinical evidence, regular communication and a transparent assessment of whether a return to work is foreseeable.

## The value of workplace adjustments and the role of Occupational Health

---

Workplace adjustments are a positive, preventative and value-adding intervention. When implemented early and proportionately, adjustments support sustained attendance, protect productivity, and reduce the risk of escalation into long-term sickness absence or workforce exit. Evidence consistently shows that the most effective adjustments are low-cost, practical, and deliver a clear return on investment through improved retention, reduced absence and preserved skills.

The consideration of workplace adjustments is not solely a legal exercise. It also reflects good employment practice, ethical responsibility and inclusive workforce design. Acas and Chartered Institute of Personnel and Development (CIPD) guidance consistently indicate that a flexible, problem-solving approach to workplace adjustments supports retention, reduces management conflict, and promotes trust and engagement across the workforce.

### **Occupational Health plays a key enabling role in this process.**

The purpose of Occupational Health input is not to act as a gatekeeper to legal entitlement, but to provide bespoke, functional and practical advice that helps employers and workers identify adjustments that are realistic, proportionate and effective in the specific work context.

Occupational Health advice focuses on:

- Functional impact rather than diagnosis
- Practical job-focused solutions rather than medical treatment
- Supporting informed, balanced employer decision-making.

This approach helps employers act early, fairly and defensibly, whether or not the Equality Act 2010 disability threshold is ultimately met.



# Discrimination arising from disability

(Equality Act 2010, Section 15)<sup>1</sup>

---

Discrimination may occur when a worker is treated unfavourably because of something arising as a consequence of their disability and the employer is unable to show that this treatment **is a proportionate means of achieving a legitimate aim** (for example, health and safety, business continuity or essential operational requirements).

A person may be disabled – for legal purposes – if their physical or mental impairment (a formal diagnosis is not required) has more than a trivial effect on their day-to-day activities and has lasted, or is likely to last, at least 12 months.

Employers should be mindful that relying solely on Occupational Health advice is insufficient. Whether an individual is legally disabled and whether there is discrimination are legal tests, not clinical ones.

Occupational Health does not determine whether the individual is legally disabled, whether discrimination has occurred, or which adjustments are considered 'reasonable'. Those are legal tests. Occupational Health provides clinical, functional and practical advice to support employer decisions.

While Occupational Health does not normally cite case law directly in routine reports, the case law and tribunal examples included in this guidance illustrate how legislation and legal duties have been interpreted and applied in practice and contextualise Occupational Health advice. Decisions of higher courts and appeal bodies may establish binding legal principles, whereas tribunal decisions are fact-specific and do not create binding precedent. All examples are included for explanatory and educational purposes only and should not be treated as determinative. Decisions in practice must be based on the individual facts, current legislation, and appropriate professional or legal advice where required.

**Case Example: *City of York Council v Grosset*** – dismissal based on conduct that was itself a consequence of disability was found to be discrimination arising from disability.<sup>2</sup>

## Legal caveat on disability status

It is important to note that while employers must make an informed judgement on whether the Equality Act 2010 applies, the final decision on whether an individual meets the legal definition of disability does not rest with the employer or with Occupational Health. Only an employment tribunal has the authority to make a definitive legal ruling on disability status under the Equality Act 2010. Employers are still required to act on the information available to them and to fulfil their duties to consider, consult and implement adjustments where disability is indicated or suspected, depending on what is reasonable to accommodate.

**Case Example: *J v DLA Piper UK LLP*** – confirmed the test for disability, including fluctuating and long-term conditions.<sup>3</sup>

1. Equality Act 2010 (c.15). 2010. London: The Stationery Office. Available at: <https://www.legislation.gov.uk/ukpga/2010/15> (Accessed 03 December 2025).  
2. *City of York Council v Grosset* [2018] EWCA Civ1105.  
3. *J v DLA Piper UK LLP* [2010] EqLR 810.



# Duty to make reasonable adjustments

## (Equality Act 2010, Section 20)

---

Occupational Health should outline adjustments that may reduce the disadvantage arising from the condition and avoid stating that an adjustment must be implemented. The report may include the following wording: “This may be a helpful adjustment for the employer to consider, subject to operational feasibility.”

Employers must consider reasonable adjustments when a disabled worker faces a significant disadvantage caused by workplace arrangements, working conditions, policies (PCPs), physical features of the workplace, or a lack of auxiliary aids.

To minimise the risk of unfavourable treatment, reasonable adjustments should be considered. These changes eliminate or lessen the disadvantage and allow the worker to carry out their role, potentially helping them stay effective at work while ensuring compliance with the Equality Act. Examples include:

- Flexible or remote working: allow staggered start/finish times or compressed hours to help workers manage health conditions. Offer part-time or full remote work where tasks allow, to reduce stress or travel-related fatigue.
- Modified absence triggers: proportionate to company policy, e.g. an additional 10–25% allowance before measures are considered.
- Ergonomic adjustments: provide specialised equipment (chairs, desks, keyboards) to prevent or accommodate musculoskeletal issues.
- Reduced workload or phased return: gradually increase duties for workers returning from long-term sickness.
- Job redesign or duty modification: temporarily or permanently adjust responsibilities to match the worker’s current capacity.

The duty requires employers to consider whether adjustments are **practicable, proportionate, sustainable and effective**.

**Case Example: *Griffiths v Secretary of State for Work and Pensions*** – absence management policies may require modification as a reasonable adjustment.

**Case Example: *G4S Cash Solutions (UK) Ltd v Powell*** – redeployment and pay protection can constitute reasonable adjustments.

### Notes for the worker regarding reasonable adjustments

- Reasonable does not mean unlimited.
- Disability does not guarantee every requested accommodation.
- Adjustments must be practical and reasonable.
- Employers must provide fair accommodations, but only those that are reasonable and feasible.
- Not all requests must be granted; adjustments should balance worker needs with business practicality.
- Employers may implement **workplace adjustments as a matter of good practice**, even where Equality Act disability criteria is not met; doing so does not imply legal disability status or create an ongoing statutory obligation.



# Workplace adjustments where Equality Act disability criteria are not met

---

Employers may choose to implement workplace adjustments as a matter of good practice, even where an employee does not meet the statutory definition of disability under the Equality Act 2010. Such adjustments can be a practical, ethical and commercially sound intervention to support effective working, maintain attendance and retain skills.

Evidence from Acas and the Chartered Institute of Personnel and Development (CIPD) consistently indicates that early, proportionate adjustments reduce sickness absence, prevent health issues escalating, improve engagement and support workforce retention. In many cases, these adjustments are low-cost and time-limited, with a clear return on investment.

From an ethical and inclusion perspective, offering adjustments, where they are feasible, reflects a commitment to fair treatment, dignity at work and inclusive employment practice. This approach recognises that health conditions and functional impacts exist on a continuum and that support does not have to be delayed until legal thresholds are definitively established.

Where adjustments are implemented on a discretionary basis, this does not constitute an acceptance that the employee is legally disabled, nor does it create an automatic or indefinite obligation to maintain or extend such measures. Adjustments should remain proportionate, reviewable, and subject to operational feasibility, with decisions informed by ongoing dialogue and, where appropriate, Occupational Health advice.

## When adjustments may not be reasonable

Reasonable adjustments comply with the Equality Act and help the worker stay effective at work; however, the duty is not absolute. An adjustment is only necessary when it is reasonable in specific circumstances. The Equality Act recognises that reasonableness depends on context, and employers can lawfully refuse adjustments that would impose a disproportionate burden. The Equality Act does not require adjustments that would significantly compromise staffing safety or business operations.

Occupational Health should present these issues neutrally. The report might include the following wording: “Based on clinical information, the adjustment trialled does not appear sustainable or effective.”

Relevant factors include:

### *(a) Financial and Operational Burden*

Adjustments may be unreasonable where they would:

- Result in significant or ongoing cost
- Pose disproportionate burden, disrupt organisational viability or threaten business viability
- Compromise essential operational or service delivery functions.

Cost alone is not determinative, but cost combined with business disruption is recognised within Equality Act guidance as relevant to reasonableness.



### **(b) Workforce Absence and Capacity**

High levels of workforce absence may limit the employer's capacity to accommodate adjustments. Relevant indicators include:

- Increased reliance on agency or overtime staffing
- Reduced productivity and service quality
- Impact on business continuity or sustainability.

### **(c) Impact on Other Workers or Safe Staffing**

Adjustments are not required where they:

- Transfer workload unsustainably to colleagues
- Displace essential duties to colleagues in an unsustainable manner
- Increase workload or risk transfer that cannot be mitigated
- Have a measurable impact on staffing levels, rotas or operational safety
- Create quantified safety or operational risks
- Displace essential duties.

**Case Example: *Chowdhury v Network Rail Infrastructure Ltd*** – employers are not required to remove or disregard essential job requirements as part of the duty to make reasonable adjustments.<sup>6</sup>

### **(d) Practicality and Role-Specific Constraints**

The duty to adjust relates to how, not whether, the substantive duties are performed. Adjustments may fall outside the duty where they:

- Prevent regulatory or contractual compliance
- Remove essential duties
- Fundamentally change the nature of the role
- Require redesigning the job beyond recognition rather than modifying performance.

**Case Example: *Lancaster v TBWA Manchester*** – employers are not required to remove essential duties or create a new role.<sup>7</sup>

### **(e) Health and Safety**

Employers have a statutory duty to ensure a safe working environment. Adjustments may be unreasonable where they introduce foreseeable safety risks or breach safety standards.

### **(f) Previous Adjustments and Effectiveness**

The change is not sustainable in the medium or long term, even if it is temporarily achievable. Where adjustments have been trialled and are neither sustainable nor effective, further adjustments might fall outside the reasonable adjustment duty. In such cases, the cumulative impact could amount to a disproportionate burden as defined by the Equality Act.

**Case Example: *Kumari v Greater Manchester Mental Health NHS Foundation Trust*** – employers are not required to continue adjustments that prove ineffective or unsustainable over time.<sup>8</sup>

6. *Mr Golam Chowdhury v Network Rail Infrastructure Ltd* [2025] EAT 132

7. *Lancaster v TBWA Manchester* [2011] ET.

8. *Kumari v Greater Manchester Mental Health NHS Foundation Trust* [2022] EAT 132.



## Considerations for SMEs and Micro-Employers

While small employers remain fully subject to the Equality Act, their size and resources are relevant when assessing proportionality. It is recognised that in smaller organisations, resource constraints, lack of redundancy in staffing, and shared or multi-functional roles may mean some adjustments place a disproportionate burden. However, the employer must still demonstrate that the requests were properly considered and that alternatives were explored.

Case law confirms that:

- A trial period in an alternative role can be considered a reasonable adjustment
- Employers should document why adjustments are, or are not, feasible in their specific context.

**Case Example: *Noor v Foreign & Commonwealth Office*** – organisational size and resources were relevant to reasonableness.<sup>9</sup>

## Objective Justification

When a decision cannot meet the reasonable adjustment obligation, any adverse treatment or alteration in employment arrangements must still be objectively justified. This involves demonstrating that:

- There is a legitimate aim (e.g. business continuity or maintaining safe and effective staffing)
- The response is proportionate, taking into account less discriminatory alternatives.

**Case Example: *Hensman v Ministry of Defence*** – employer justified action on grounds of operational necessity.<sup>10</sup>

9. *Noor v Foreign & Commonwealth Office* [2020] ET.  
10. *Hensman v Ministry of Defence* [2014] EqLR 642.



# Employment outcomes

---

Where reasonable adjustments have been thoroughly explored and trialled, and the worker is still unable to perform the core duties of the role, and no suitable alternative role is available, it may be reasonable to conclude that the role cannot be maintained. Any such decision must be justified and clearly documented.

## Employer expectations in managing long-term absence

Employers should manage long-term absences lawfully, fairly and systematically. The organisation must adopt a proactive and supportive approach, ensure adherence to internal policies, follow an appropriate process, and fulfil all legal obligations under the Equality Act 2010, the Employment Rights Act 1996, and the Acas principles.

Employers are expected to adopt a positive, proactive and fair approach when supporting workers during long-term absence. This involves maintaining regular communication, seeking clinical guidance where appropriate, and exploring adjustments, redeployment or phased return options in good faith. The process should be collaborative and supportive, while balancing organisational needs, safety requirements, and operational continuity.

An employer may be justified in not implementing a proposed adjustment if, after proper consideration and review of the evidence, it would be unreasonable due to factors such as cost, practicability, effectiveness or operational impact.

Additionally, there will be situations where a long-term absence is not sustainable. The Equality Act and case law recognise that the employer is not obliged to keep someone employed indefinitely if a return to work is unlikely or if ongoing absence imposes a disproportionate burden.

## Foreseeability and Sustainability of Continued Absence

### Foreseeability of Return to Work

A return is foreseeable only if reliable evidence indicates recovery, a clear timeframe is provided, and the employer can sustain the absence.

Where timescales are uncertain, unclear or indeterminate, tribunals generally consider that return is not foreseeable.

### Indicative Timeframes for Foreseeability of Return to Work – Practice Guidance

Indicative timeframes used to describe whether a return to work is foreseeable are based on occupational health practice experience and absence management guidance rather than statutory definition. They are intended as an advisory framework to support consistent decision-making and discussion with employers and workers and must not be applied as fixed rules. All cases should be assessed individually, taking into account medical evidence, functional capacity, prognosis reliability, workplace factors, organisational sustainability and current occupational health professional guidance.<sup>11</sup>

11. Faculty of Occupational Medicine (FOM). (2019). Fitness for Work (6th edition). Available at: <https://www.fom.ac.uk/publications-policy-consultations/fitness-for-work-6th-edition-now-available> (Accessed 05 February 2026).



---

Suggested (non-binding) working ranges may include:

- Foreseeable: typically, within 4–6 weeks or up to 2–3 months, where there is clear supporting clinical evidence
- Case-by-case: approximately 3–6 months, where the prognosis is reasonably reliable, and the employer can sustain the absence
- Not foreseeable: around 6–12 months or longer, where there is no clear recovery timeframe or dependable prognosis.

Key indicators of a non-foreseeable return include prognosis being dependent on unpredictable factors, such as:

- ‘Unknown’ or ‘cannot estimate’ timescales
- Chronic or deteriorating conditions
- Lack of an effective treatment plan

Employers are not required to hold a role open indefinitely. Any decision made by the employer regarding long-term absence or capability should not come as a surprise to the employee. The employer must ensure concerns, evidence, clinical advice, reasonable adjustments and potential outcomes are discussed openly and transparently throughout the process and any consideration of dismissal or capability action should occur only after clear communication, consultation, and an opportunity to respond.

Occupational Health should avoid speculation. If timescales are unknown, the report may include the following wording: “There is insufficient clinical evidence to provide a reliable timeframe for return.”

**Case Example: *East Lindsey District Council v Daubney*** – consultation before dismissal is essential.<sup>12</sup>

**Case Example: *BS v Dundee City Council*** – return to work must be realistically foreseeable.<sup>13</sup>

## Conclusion

---

The Equality Act 2010 requires employers to make reasonable adjustments for disabled workers unless doing so would impose a disproportionate burden. Decisions should always be justified, supported by evidence, and based on feasibility, safety, sustainability and operational need.

It is important to note that Occupational Health does not make the final decision regarding reasonable adjustments or employment outcomes. The role of Occupational Health is to provide expert advice and recommendations about a worker’s health, capabilities and potential accommodations. The ultimate decision rests with management, who must carefully consider the advice, weigh it against business needs, and decide which adjustments can reasonably be implemented without causing undue hardship.

12. *East Lindsey District Council v Daubney* [1977] ICR 566.

13. *BS v Dundee City Council* [2013] CSIH 91.



# Disability-related provisions anticipated under the UK Employment Rights Act

---

## Written outcomes for adjustment requests

Employers will be expected to provide clear written decisions on reasonable adjustment requests. These outcomes are likely to be required to explain which adjustments are agreed or declined and why, to support transparency and consistency.

## Trigger for duty to consider adjustments

Employers are anticipated to be required to consider reasonable adjustments when disability is indicated, rather than waiting for formal diagnosis or Occupational Health confirmation, reflecting a shift towards early identification and proactive support.

## Consultation duties

Employers will likely be expected to demonstrate meaningful consultation before declining adjustments or progressing to capability processes. This is anticipated to include exploring alternatives and documenting the basis for decisions.

## Using external support, such as access to work

Employers, including SMEs, are likely to be encouraged or required to consider external support such as Access to Work when evaluating feasible adjustments, to support affordability and sustainability.

## Documented justification for long-term absence decisions

Before making decisions related to capability or dismissal, employers will be expected to document clinical evidence, adjustments explored or trialed, operational considerations, and why a return to work is unlikely to be foreseeable.

## Periodic review of adjustments

Adjustments are likely to be expected to undergo periodic review to ensure they are effective, sustainable and align with both employee needs and organisational requirements.

## Christine Poulter

Honorary Strategic Clinical Advisor for the Society of Occupational Medicine (SOM)

*With special thanks to Diana Kloss, barrister and specialist adviser in occupational health law, for her review and advice.*



Supporting occupational health  
and wellbeing professionals

© 2026 The Society of Occupational Medicine  
2 St Andrews Place, London NW1 4LB

Charity Commission No: 1184142  
Scottish Charity No: SC049793  
VAT No: 927 0030 57