

DEFINITION OF DISABILITY

The Disability Discrimination Act (DDA) defines a disability as a **physical or mental impairment that has a substantial and long term adverse impact on a person's ability to carry out normal day to day activities.**

DIRECT DISCRIMINATION

Direct Disability Discrimination occurs if a Force treats a disabled officer less favourably than it treats or would treat an officer not having that particular disability whose circumstances and abilities are comparable to those of the disabled person. Direct discrimination cannot be justified. Direct discrimination could occur, for example, if a Force operated a blanket ban on officers with diabetes undertaking driving duties without proper consideration of individual circumstances and abilities.

DISABILITY RELATED DISCRIMINATION

Disability Related Discrimination would occur if a force treats an officer less favourably for a reason related to their disability than they treat or would treat an officer to whom that reason does not or would not apply, and if such treatment cannot be justified. A possible example would be an officer who has arthritis which prevents him from typing and is turned down for a role in the custody office. He is being less favourably treated (in being turned down for the role) for a reason related to his disability (his inability to type) than someone to whom the reason did not apply (who was not prevented from typing). This treatment would be unlawful unless justified.

JUSTIFICATION

For the Force **to justify any disability related discrimination**, they must show that the treatment was material to the particular circumstances and that there were substantial reasons for the treatment. The Force would not be able to claim justification if they had not complied with the duty to make reasonable adjustments unless they could show that the treatment would have been justified even if they had complied with the duty to make a reasonable adjustment.

REASONABLE ADJUSTMENTS

If a force applies a provision, criterion or practice that places a disabled officer at a substantial disadvantage in comparison with officers who are not disabled they must take such steps as are reasonable in all the circumstances to remove the substantial disadvantage. When deciding if an adjustment is reasonable consideration must be given to the extent to which the adjustment would alleviate the disadvantage, the practicalities, cost and potential disruption of making the adjustment and the nature, size and financial resources of the force. Adjustments could include alterations to premises, equipment, duties or hours of work, permitting absence for treatment or rehabilitation and providing a supportive working environment including training. The approach should be to fit the job around the officer, not the officer around the job. A failure to make a reasonable adjustment cannot be justified by the force, however the duty to make a reasonable adjustment will only apply if the force has knowledge of the disability.

SICK LEAVE

If an officer suffers less favourable treatment because he or she has taken sick leave, this may be unlawful if the sick leave was related to a disability. It could be disability related discrimination unless the Force can justify the treatment. The Force should consider excluding disability related sickness absence from selection criteria for SPPs, CRTPs, promotion or other similar procedures as a reasonable adjustment. They could also allow a period of Disability-Related Leave; for example, time off to undergo medical treatment related to a disability.

SICK PAY

In most cases, an officer on sick leave is entitled to full pay for 6 months and then to half pay for 6 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 pay or full pay instead of half or no pay. Particular circumstances where this should apply are:

- the incapacity is directly attributable to an injury or illness that was sustained or contracted in the execution of his/her duty;
- the illness may prove to be terminal;
- the officer has been referred to a selected medical practitioner for consideration of permanent disablement.

In recognition of the possible impact of the DDA and disability related sick leave, sick pay should be extended where the chief officer considers that it would be a "reasonable adjustment" to extend sick pay, generally speaking to allow (further) reasonable adjustments to be made to enable the officer to return to work.

RECUPERATIVE AND RESTRICTED DUTIES

A Force may consider providing an officer with recuperative or restricted duties as a reasonable adjustment to reduce the effects of their disability. Recuperative duties are usually for a set period. They could include a retraining programme, a period of physiotherapy or reduced hours working so that the officer can gradually return to full duties. Restricted duties can be a temporary or a permanent adjustment. They could include altered duties, a fixed shift pattern or reduced hours working. Recuperative or restricted duties should be arranged in consultation with the officer and the Force Occupational Health Department.

MEDICAL RETIREMENT

Disablement under the Police Pension Regulations is different from the definition of disability under the DDA, 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 Police Authority 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. This principle is consistent with the DDA, which places a duty on the force to make reasonable adjustments for disabled officers to continue performing duty.

CAREER DEVELOPMENT

If an officer is disabled or on restricted or recuperative duties they should not be prevented from being appraised in their current role, applying for other roles, undertaking training or seeking promotion. The Force has a duty to make reasonable adjustments and not to treat the officer less favourably for a reason connected to a disability unless it can be justified. In addition, NPIA will make reasonable adjustments for disabled officers going through the promotion processes.

HEALTH AND SAFETY

The fact that an officer has a disability does not necessarily mean that s/he represents an additional risk to health and safety. Under health and safety law every Force must ensure, so far as is reasonably practicable, the health, safety and welfare at work of all officers. They must assess the risks and put in place measures that reduce the risks to as low a level as can reasonably be achieved. Genuine concerns about the health and safety of any officer (including a disabled officer) may be relevant when seeking to establish that disability-related less favourable treatment of a disabled officer is justified. However, it is important to remember that the law does not require Forces to remove all conceivable risk, but to ensure that risk is properly appreciated, understood and managed.

© Printed by **The Police Federation of England and Wales**
Federation House, Highbury Drive, Leatherhead, Surrey KT22 7UY



POLICE FEDERATION
of England and Wales

Internet: www.polfed.org

Intranet: <http://pfnet>
(access limited to JBB staff)

Disability

JANUARY 2009

The Police Federation of England and Wales is the representative body for all Constables, Sergeants and Inspector ranks in the Police Forces of England and Wales. This leaflet has been prepared to provide guidance for disabled police officers by the Police Federation with the support of the Disability Rights Commission. The DRC is now part of the Equality and Human Rights Commission (EHRC). Advice can also be obtained from your Federation office or Representative.