

# Reasonable Adjustment Policy

This document provides an overview of the processes to follow to ensure the Trust meets its legal obligation under the Equality Act 2010 to consider reasonable adjustments in the workplace.

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## Version Control and Summary of Changes

Version number	Date	Comments (description change and amendments)
1	May 2013	Draft policy and appendices
2	June 12 2013	Pre consultation amendments following review with HR
3	August 2013	Amendments following consultation with Staffside Discussed with HR Operation Team for comments and amendments
4	18 October 2103	Added links to sources. Comments Occupational Health and Policy Group
5	29 October 2013	Added FAQ's in appendix 4. Updated Monitoring and compliance table.
6	21 March 2016	Post policy review added two additional useful links Page 22 local support organisation for city and county residents
7	30 September 2016	Changes to the policy generally in terms of references and format.
		Inclusion of 1.7 covering 'Conditions automatically treated as a disability'

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## Definitions that apply to this Policy

<b>Access to Work</b>	<p>Access to Work is a specialist disability service delivered by Jobcentre Plus, which provides practical advice and support to disabled people in employment and their employers to help them overcome work related obstacles resulting from disability.</p> <p>It is provided where an individual requires support or adaptations beyond the reasonable adjustments which an employer is legally obliged to provide under the Equality Act.</p>
<b>Disabled</b>	<p>The legal definition of disability is much broader than most people realise. It covers people with mobility difficulties, sight or hearing impairments, learning disabilities, long-term conditions such as depression, diabetes or sickle-cell anaemia and people with certain illnesses such as cancer.</p>
<b>Disability Leave</b>	<p>Disability leave is a 'reasonable adjustment' under the Equality Act (2010) and is distinct from sickness absence as it includes time when an employee is well but absent from work for a <u>disability related reason</u>.</p>
<b>Discrimination arising from disability</b>	<p>It is unlawful to discriminate against employees because of a physical or mental disability or fail to make reasonable adjustments to accommodate an employee's disability. Under the Equality Act 2010 (the Act) a person is classified as disabled if they have a physical or mental impairment which has a substantial and long-term effect on their ability to carry out normal day-to-day activities. Day-to-day activities include things such as using a telephone, reading a book or using public transport.</p>
<b>Due Regard</b>	<p>Having <b>due regard</b> for advancing equality involves:</p> <ul style="list-style-type: none"> <li>• Removing or minimising disadvantages suffered by people due to their protected characteristics.</li> <li>• Taking steps to meet the needs of the people from protected groups where these are different from the needs of other people.</li> <li>• Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.</li> </ul>
<b>Reasonable Adjustment</b>	<p>A reasonable adjustment is an alteration that an employer could make that would enable a disabled person to continue to carry out their duties without being at a disadvantage compared to others. Under the Equality Act 2010, there is a <b>legal duty</b> on employers to make these reasonable adjustments for disabled employees.</p>
<b>Social Model</b>	<p>The Trust adopts the Social Model which is that disabled people don't have 'disabilities' they face barriers by which they are 'disabled'.</p>

## **Equality Statement**

Leicestershire Partnership NHS Trust (hereafter referred to as the Trust) aims to design and implement policy documents that meet the diverse needs of our service, population and workforce, ensuring that none are placed at a disadvantage over others. It takes into account the provisions of the Equality Act 2010 (Hereafter referred to as the Act) and advances equal opportunities for all. This document has been assessed to ensure that no one receives less favourable treatment on the protected characteristics of their age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex (gender) or sexual orientation.

In carrying out its functions, the Trust must have due regard to the different needs of different protected equality groups in their area. This applies to all the activities for which LPT is responsible, including policy development, review and implementation.

### **1. Introduction**

- 1.1 The Equality Act 2010 (The Act) requires the Trust to such to make 'reasonable adjustments' where a provision, criterion, function, practice, and/or physical, environmental conditions of features in premises occupied by the Trust, places a disabled person at a substantial disadvantage when compared with people who are not disabled.
- 1.2 For people with a disability or a long-term health condition, their sickness absence may have nothing to do with their disability. However, if their sickness absence is related to a disability, LPT has a duty under the Equality Act 2010 to make reasonable adjustments.
- 1.3 Reasonable Adjustment may be required when a disabled person applies for and is recruited to a post, when a member of staff becomes disabled or develops a long term health condition, when the impact of an impairment or medical condition deteriorates for an employee, when there is a change to the workplace or employment arrangements, or when there is need for a disabled member of staff to undertake further training.
- 1.4 Reasonable Adjustments may extend to the individual concerned only (such as providing a Support Worker, acquiring or adapting specialist equipment or organising transport to-from and within work). Or, they may be more wide-ranging to include changes to policies, procedures or corporate functions, to working arrangements or to enable access to premises that also includes car parking, signage, light/noise levels and safe evacuation.
- 1.5 The Trust must take reasonable steps to avoid disadvantage being caused to any disabled person in relation to recruitment, retention, promotion, development, retirement and dismissal.
- 1.6 In accordance with the Trust Equality, Diversity and Human Rights Policy the Trust recognises and uses the social model of disability. This policy aims to support any disabled member of staff who requires reasonable adjustments as far as this is reasonably possible.

### **2. Aims and Objective**

## 2.1 This policy aims to:

- To raise awareness amongst all managers and staff of the moral, social and legal obligations to make reasonable adjustments for people who are disabled or who have a long term health condition, and in particular, the requirements under the Act.
- To encourage disabled staff to declare their information which enables the Trust to abide request for 'Reasonable Adjustments' and to feel confident in the knowledge that they will be supported by the Trust should they require them.
- To provide managers who are responsible for making adjustments with information about their obligations under this policy, the procedure to follow, examples of adjustments that can be made and sources of support and guidance.
- To provide staff with the procedure to be followed if they feel that this policy is not being adhered to.
- To provide staff with the procedure to be followed if Health and Safety or Occupational Health advice conflicts with this policy statement.

## 3. Scope

3.1 All managers and staff are required to adhere to their responsibilities under this policy. These responsibilities are outlined in the following section. It is important to note that reasonable adjustments must be implemented for people who belong to the following groups, and who have an impairment or health condition that falls within the definition of 'disabled' under the Act as described in Appendix 1.

- Permanent, temporary and bank staff.
- Staff employed on a contractual basis.
- Volunteers or visitors undertaking work for, in partnership with or on behalf of the Trust.
- People on work placement with the Trust.
- People not employed by the Trust attending Trust training or development courses, whether on or off site.
- People on secondment to or from the Trust.
- Office holders such as board members and non-executive directors.
- People not employed by the Trust attending Trust related social or other events, whether on or off site.

## 4. Roles and Responsibilities

### 4.1 Trust

- The Trust has a responsibility to ensure that it complies with the Act to the effect that staff who have an impairment or long-term health condition are not discriminated against, and have reasonable adjustments made for them as required.

- The Trust has further responsibilities to ensure that managers are made aware of their obligations towards disabled staff and are supported in fulfilling them.
- The Trust is liable for the actions of its contractors as well as staff, regardless of whether such actions are with the express or implied authority of the Trust.
- Where an adjustment is considered reasonable, the Trust has a duty to make that adjustment, except where it did not know, and could not reasonably have known, that an adjustment is required.
- The Trust has an anticipatory duty to make adjustments. For example, processes must be in place to enable provision of information in Braille, even if this is not been requested to date, it is not acceptable to not make provisions just because a specific need has not as yet been identified.
- The Trust must also be able to show that it took such steps as are reasonable to encourage disclosure, as outlined below.

#### **4.2 Line Managers**

- When notified that a member of their staff has an impairment or long-term health condition, Managers in turn have a duty to inform/involve Human Resources (HR). The Manager should then investigate and implement any recommended reasonable adjustments in conjunction with HR. Consultation and advice should also be sought from Equality and Human Rights Team, Occupational Health, Health and Safety advisors, Estates, IT advisor, Disabled Staff Group, Disability Employment Advisor (DEA) as well as the employee concerned.
- Where appropriate Managers may need to brief other members of the team (with the consent from the individual), particularly in situations where the reasonable adjustments require a re-distribution of work tasks, hours or a change in work location. This must be undertaken in a sensitive manner in consultation with the employee.
- Any requests from the staff member for confidentiality that could potentially impact upon the support or extent of reasonable adjustments that might be made should be discussed with the staff member.
- Line Managers will also take action to co-ordinate the implementation of reasonable adjustments following Access to Work, Occupational Health or other Health and Safety recommendations and in conjunction with the disabled member of staff, his/her manager and other relevant teams across the Trust.
- In accordance with the 'Mindful Employer' and 'Positive about Disabled People', Line managers to review the effectiveness of all reasonable adjustments and ensure they are monitored and reviewed annually, as part of the Trust Appraisal process.

#### **4.3 Staff**

- All staff have a responsibility to understand that people with an impairment or long-term health condition that impacts upon their daily activities, may require 'reasonable' adjustments from the employer. Such adjustments are intended to tackle discrimination and create equality in opportunity for disabled employees, and are carefully designed so that they do not impact negatively on the work of other staff or the organisation.
- Although it is the responsibility of the Trust to take steps to find out about any need for reasonable adjustments, disabled employees have an obligation under this policy to bring to the attention of their Line Manager the fact that they have additional needs, and to assist with the investigation and implementation of reasonable adjustments as required.
- Therefore staff should maintain appropriate, timely communication with their line manager if they believe they have developed an illness or condition that may fall within the boundaries of the equality Act and reasonable adjustments may be required to enable them to support them to undertake their role.
- Staff responsible for organising functions, events, courses and meetings must ensure that all participants and visitors are asked if they require reasonable adjustments in advance and ensure that these are investigated and implemented as appropriate. The responsible of organising such events will notify the Guest speakers/Facilitators presenting at such functions, events, courses and meeting will be made aware of the reasonable adjustments.
- Staff working in 'high-relevance' teams such as HR, Occupational Health, Health and Safety, Estates and Communications Department are required to consider this policy when providing reports, advice, assessments and guidance to the Trust. This includes paying due regard to any need for reasonable adjustments, adopting an inclusive approach to the employment and retention of disabled staff, promoting equality and diversity and assessing any policy and strategic developments for barriers and potential adverse impact.
- Staff networks (such as staff support group representatives, staff counsellors, staff carrying out Trade Union or professional organisations) have obligations and have a duty of care under this policy once notified that a member of staff is disabled. These are described in the following section.

#### **4.3.1 Staff Supported by this Policy**

The individual has a responsibility to fully co-operate with Line Management, HR, other employees or supporting services in order to maintain a satisfactory level of performance and attendance. The individual should commit and follow agreed adjustments. Should any issues or concerns arise then they should raise this with their line manager at the earliest opportunity in order for it to be addressed as quickly as possible.

#### **4.4. Human Resources**

Human Resources have a duty to take proactive measures to encourage

disclosure of additional need. This can be done through adopting positive publicity, environment and workplace culture, promotion of this policy, and via the recruitment, interview, appointment or other registration processes.

## **4.5 Access to Work (Appendix 5)**

4.5.1 Access to Work was introduced in June 1994.

- A government-run programme delivered by Jobcentre Plus to help overcome barriers that disabled people come across in when moving into or retaining employment.
- It is provided where the employee requires support or adaptations beyond those “reasonable adjustments” which an employer is legally obliged to provide under the ‘Equality Act 2010’
- It is not there to duplicate funding available from other sources.
- It is a flexible programme that focuses on the needs of the individual.

### **4.5.1 Conditions automatically treated as a Disability**

Employees will automatically be protected against discrimination under the Equality Act 2010 from the day they are diagnosed if they have Cancer, HIV or Multiple Sclerosis.

Under the Equality Act a person is disabled if they have 'a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities'. However, there are exceptions to this definition. These exceptions include certain medical diagnoses, progressive and life-threatening conditions. A progressive condition is one that gets worse over time, such as muscular dystrophy and motor neurone disease. Employees with a progressive condition can be classed as disabled.

An employer can be an important source of support for the employee trying to manage their condition so it is a good idea to discuss issues with them. Many people with progressive or life threatening conditions can work and have an active and fulfilling career. Please click on the [ACAS](#) site for details.

## **5.0 Putting the Policy into Practice**

There are 5 steps to be followed as applicable to ensure that this policy is carried out in practice. All staff should be familiar with each of the following steps in turn.

### **5.1. Step 1 - Identification of Reasonable Adjustments**

New and existing staff may not declare they are disabled or have long-term health condition because:

- They feel that they won't get a job, training, development or promotion.
- Their impairment is hidden and they feel embarrassed about bringing it up because it may be seen as trivial.
- Previous negative experiences in employment have left them worried about raising it.
- They may not like to ask for help or feel that they can manage and want to fit-in and not make a fuss.
- They are scared of losing their job.
- They think that they will be received unsympathetically or be told to “just get on with it”.

5.1.1 The anticipatory duty placed upon the Trust requires staff to take reasonable steps to find out whether reasonable adjustments are needed. Such steps might include:

- Recruitment stage (pre –appointment)– applicants will be asked if they require any reasonable adjustments to enable them to attend their interview for a specific post.
- Asking all staff at appointment with the Trust if they have any additional needs as a result of an impairment or health condition. A clear explanation of why such information is sought, who else will see or have access to the information, what will be done with the information and how it will be used to trigger follow-up support or adjustments should be provided. Rather than asking staff to identify if they are disabled, it is more useful to ask if a member of staff may need any adjustments and what they may be.
- An example statement for use verbally or in written communications is: *‘The Trust aims to be an equal opportunities and diverse employer. Please let us know if you have any access needs regarding premises, information, communication media or with regard to participating in our processes, services and events’.*
- Providing on-going opportunities for disclosure since many new staff may be hesitant to disclose additional needs at the start of employment. This might be done through annual Performance Development Reviews, reminders of support available to meet additional needs at team briefings, and reminders of this policy through email bulletins, etc.
- Ensuring that staff are informed of the Trust’s positive stance towards recruitment and retention of disabled staff through practices such as attaining and using the two-ticks accreditation symbol and ensuring high profile for the Disabled Staff Support group.
- Projecting a clear welcoming message to the public and staff through literature i.e. recruitment, Trust Annual Report, ensuring full access to website, using appropriate language in written materials and showing positive photographs or illustrations of disabled people.
- In compliance with the Act, ensuring Trust-wide promotion of equal opportunities for and positive attitudes towards disabled people, as well as elimination of unlawful discrimination and harassment.
- Signpost staff during induction and core mandatory training to key aspects of the policy in context of equality and Human Rights awareness

## 5.2. **Step 2 - Action to be taken when notified that a person has additional needs**

Under this policy all staff who are notified that a person is disabled and requires reasonable adjustments to be made, have a duty either:

- To investigate and implement such adjustments (if they are in position of event organiser / facilitator or manager for that employee); or
- To advise the member of staff to talk to his/her line manager about their additional needs (if a colleague has disclosed privately or in confidence).

Please note: Issues of confidentiality are addressed in the following section.

5.2.1 If a person requests adjustments to be made, then it is the line manager's responsibility to investigate and implement them as fully as possible, taking advice from the range of sources given below and in accordance with any request for confidentiality. Refusal to make an adjustment, or any decision to substitute a request for a specific adjustment for an alternative one, must be explained in full and in writing to the Director of Human Resources and OD. They will have the responsibility for the final decision on the appropriate course of action.

N.B It is important to remember that only a Chair of an Employment Tribunal has the authority to determine whether a person's impairment or health condition affords them protection under the law

5.2.2 When determining the kinds of adjustments that might be both reasonable and appropriate, staff may wish to take advice from:

- The disabled person himself/herself, who will know their own needs and, in most cases, the kinds of adjustments that will be most effective
- Occupational Health, who may provide a report of recommendations regarding working environment and practices.
- Health and Safety, who may undertake a risk assessment and indicate any changes to procedures, provision of additional training or purchase of extra equipment that is required.
- Access to Work, who will fund a 'Vocational', 'Ergonomic' and/or 'technology and equipment' assessment of need for the employee that is undertaken by an appropriate impairment or medical specialist, and that recommends solutions to any potential barriers. In most cases, Access to Work will fund whole or part of these recommendations (see Appendix 5 for details). Other internal/external personnel with appropriate expertise that might include Estates, IM&T, and local/national specialist organisations for disabled people e.g. Health @ Work, REMPLOY, and Leicestershire Centre for Integrated Living (LCIL) <http://www.lcil.org.uk/>. There may be occasions where multi agency advice is linked together to ensure the needs and adjustments are most effective.

5.2.3 Where the impairment and need for adjustments is clear, no proof of confirmation is necessary. However, for hidden impairments or long-term health conditions, evidence of need might be requested prior to undertaking adjustments (such as medical confirmation, or Educational Psychologist's report in the case of Dyslexia or other learning difficulties).

#### 5.2.4 **Confidentiality**

5.2.5 Staff who are made aware of a colleague's impairment or health condition in confidence must:

- Advise the colleague to discuss their needs with their line manager, or other departmental manager, drawing their attention to this policy and other appropriate documents and corporate commitments.
- Advise the staff of other sources of support available (such as Union and Staff Associations, staff networks, counselling services such as AMICA, etc.
- Discuss options regarding confidentiality (such as if, how and on what terms any aspect of the disclosed information might be brought to the attention of management, whether information might be shared anonymously, etc.).
- If he/she feels that the disclosed information may have health and safety or legal implications, inform the person of the extent to which confidentiality can/cannot be maintained, and of the obligation to inform management. The disabled person must be included in all discussions regarding his/her impairment or health condition.

5.2.6 Permissible Breach - An individual's breach of confidentiality can only occur where the disabled person's own safety is at risk, where the safety of others is at risk, or where a failure to disclose may result in criminal activity. Please see [Leicestershire Information Sharing Protocol or Information Governance Policy](#) for more information or go to the Information Governance team for advice regarding confidentiality matters.

5.2.7 The Trust recognises that in some situations other colleagues may become aware of a staff members impairment or health condition that requires a reasonable adjustment to be made (regardless of whether or not there will be an outcome of a reasonable adjustment). Should this be the case the information must be treated as confidential and cannot be forwarded to a third party without the consent of the staff member concerned. This is because the impairment /health condition of the staff member is classed as 'sensitive personal data' under the Data Protection Act 1998.

### 5.3 Step 3 - Making Reasonable Adjustments

5.3.1 The Act does not provide employers with a complete list of adjustments, because adjustments may vary between members of staff, their experience of their impairment and the type of work they carry out. Subsequently there is no 'one size fits all' method to use. Some examples of reasonable adjustments that you can make include; (this list is not exhaustive)

- Flexible working arrangements in relation to hours, location and distribution of duties.
- Disability leave or time off for assessment, rehabilitation, treatment or counselling.
- Making adjustments to premises to enhance access for individuals with physical or sensory impairments, mental health or learning needs, or health conditions such as epilepsy or diabetes.
- Acquiring or modifying equipment e.g. magnifier, induction loop, desk-lamp, larger PC screen, adjustable-height furniture, voice activated software or a telephone adapted with an amplifier.
- Providing additional training.
- Providing additional supervision or mentoring.
- Transcribing or modifying instructions e.g. putting agendas, minutes or other information into accessible formats such as large font, Braille or CD-ROM, making documentation available electronically via email attachment or on the Intranet.
- Modifying procedures for testing or assessment.

- Providing a reader or interpreter.
- Allowing the member of staff to work in a private room if most work is done in an open-plan office. Redeployment of an employee into a suitable alternative role. Please refer to the Sickness Absence Management Policy and Procedure
- allowing extra breaks to help an employee cope with fatigue
- moving a work base - for example, transferring to a ground-floor office if breathlessness makes it difficult to climb stairs

N.B In defining what is 'reasonable' for the purposes of the Act, only a court or employment tribunal can confirm this. In doing so, they will consider the following factors:

- The effectiveness of the adjustment in preventing the disadvantage.
- The practicality of the step.
- The financial and other costs to the Trust.
- The extent of any disruption caused.
- The extent of the Trust's financial and other resources.
- The extent of financial assistance that might be given to the Trust through, for example the Access to Work scheme
- The impact on other staff.
- Any prescribed standards or professional requirements for the role.
- Adjustments made for other disabled staff.
- The extent to which the disabled person is willing to co-operate.

#### **5.4 Step 4 - Tailored adjustment agreement**

5.4.1 A template of the 'Tailored Adjustment Agreement' can be found in Appendix 2. A 'Tailored adjustment agreement' is a living record of reasonable adjustments agreed between a disabled employee and their line manager.

5.4.2 The purpose of the agreement is to:

- Ensure that both parties, the individual and the manager, have an accurate record of what has been agreed.
- Minimise the need to re-negotiate reasonable adjustments every time the employee changes jobs, is re-located or assigned a new manager within the organisation.
- Provide employees and their line managers with the basis for discussions about reasonable adjustments at future meetings.

5.4.3 A tailored adjustment agreement should be completed within 3 months of the disability being highlighted to management. The agreement is a live document and should be reviewed regularly by both the employee and manager and amended as appropriate. Expert advice from third parties, such as occupational health advisers, Access to Work or IT specialists may be needed before changes can be agreed and implemented.

5.4.4 New line managers of employees with such 'Tailored adjustment agreements' should accept the adjustments outlined in the agreement as reasonable and ensure that they continue to be implemented. The agreement may need to be reviewed and amended at a later date but this should not happen until both parties have worked together for a reasonable period of time.

The agreement allows the employee to:

- Explain the impact of their disability at work.
- Suggest adjustments that will make it easier for them to do their job.
- Obtain further information from their doctor, specialist or other expert.
- Request an assessment by occupational health, Access to Work or another expert.
- Review the effectiveness of the adjustments agreed.
- Explain any change in circumstances.
- Be reassured that their line manager knows what to do if the employee becomes unwell at work and who to contact if necessary.
- Know how and when their line manager will keep in touch if the employee is absent from work because of illness or a disability related reason.

5.4.4 The agreement allows the line manager to:

- Understand how a particular employee's disability affects them at work.
- Explain the needs of the business or organisation.
- Explain the organisation's Sickness and Absence Management Policy and Reasonable Adjustments Policy.
- Recognise signs that an employee might be unwell and know what the employee wants to do in these circumstances including who to contact for help.
- Know how and when to stay in touch if the employee is off sick.
- Consider whether or not the employee needs to be referred for an assessment by an occupational health or another adviser to help both parties understand what adjustments are needed.
- Review the effectiveness of the adjustments already agreed including the continuing need for such arrangements.

## **5.5 Step 5 - Review of Fitness for purpose**

5.5.1 It is important to remember that a reasonable adjustment that has worked effectively for many years may stop being as effective as the person's impairment or health condition changes or the nature of the work itself changes. It is equally important to remember that two people with the same impairment may require different reasonable adjustments to be made.

5.5.2 It is recognised that in some cases an adjustment may be put in place, which the person with the responsibility to do so believes is effective, but which the disabled member of staff feels is not adequate.

5.5.3 In this situation, the line manager that has been discussed the adjustments with the employee should take the following action:

- Review the effectiveness of the adjustment to identify concerns (if any).
- Discuss alternatives that could address the difficulties identified.
- Seek specialist advice from internal and external sources (e.g. Occupational Health, Equality and Human Rights team, a disability advisor at Jobcentre plus, etc.).
- Implement new reasonable adjustments if relevant.
- Review the effectiveness on a regular basis. A review must take place at least every 12 months or more frequently if required.

5.5.4 The member of staff concerned has a responsibility to co-operate with this process.

## 6.0 Disability Leave

- 6.1 Disability leave is not the same as Sick Leave or Special Leave. Disability leave is a 'reasonable adjustment' under the Equality Act (2010) and is distinct from sickness absence as it includes time when an employee is well but absent from work for a disability related reason. Where disability leave is needed, agreement must be reached between the manager and employee on the approximate number of days and approximate date of leave.
- 6.2 This may not be exact but will help in planning service delivery. Leave should only be granted for reasons connected with rehabilitation, assessment, treatment or the servicing of necessary equipment or disability aids.
- 6.3 The number of days leave must be viewed as reasonable and manageable by the manager.
- 6.4 A Disability Leave request form (Appendix 3) must be completed and sent to your line manager. Managers should seek advice from the HR department when considering requests for Disability Leave and please refer to Appendix 4 Frequently Asked Questions for further information.
- 6.5 Disability Leave may be for a long or short period of time and may or may not be pre-planned. Where planned Disability Leave is needed, reasonable notice must be given, and agreement reached on the number of days and date/s of the leave.
- 6.6 Some examples of **planned disability leave** include (but are not limited to):
- Hospital or Doctors' appointments.
  - Hospital treatment as an outpatient
  - Assessment for conditions such as dyslexia
  - Hearing aid tests
  - Training with a guide dog or hearing dog
  - Counselling/ therapeutic treatment
  - Physiotherapy/Occupational Therapy
- 6.7 Some examples of **longer disability leave** include (but are not limited to):
- A period of time off while reasonable adjustments are made at work
  - To allow an employee with either a newly acquired disability, or where there has been a significant change in the condition, to make changes inside and outside work, in order to accommodate their disability where there is a need for substantial changes to be made.
  - A phased return to work following period of time off.
- 6.8 Previously these type of absences may have been classed as sick leave or the employee may have had to use annual leave or make the time up at a later date to accommodate such absences.
- 6.9 Every effort should be made not to delay the return of an individual who is fit to return to work.
- 6.10 Employees must be clear that the Trust is entitled to expect a reasonable level of attendance from all staff members. Although the Equality Act will be

considered when managing sickness absence, it will not automatically prevent a member of staff from going through the levels of the Sickness Absence Management Policy and Procedure.

- 6.11 If an employee is absent due to sickness and it becomes clear that they may now qualify for disability leave they should discuss this with their line manager and submit a Disability Leave Request Form (Appendix 3).
- 6.12 Time spent on Disability Leave is counted as continuous service for all contractual benefits, including accruing annual leave, sick leave, and pension rights.
- 6.13 Disability leave must not be included for the purposes of assessing performance, promotion, attendance, selection for redundancy, and similar issues. To do so might discriminate against the employee with a disability.
- 6.14 Disability leave should be recorded by managers separately as 'disability' and 'non-disability-related' absences. Appendix 3 must be completed and signed by managers recorded onto the Electronic Staff Record system.
  - \* For line managers /ESR – to record on to ESR, select the following;
    - Absence Type: Special Increasing Balance
    - Absence reason: Disability leave
- 6.15 Line Managers are expected to keep a record of the number of 'Disability Leave' days taken throughout the leave year.
- 6.16 Appeals about the amount of disability leave allowed should be dealt with through the Trusts Grievance Procedure.
- 6.17 A number of practical examples/ case studies in relation to the provision of reasonable adjustments and particularly disability leave are provided in appendix 5
- 6.18 The following link to the Equality and Human Rights Commission provides helpful guidance to ensure employees are not discriminated when authorising time off as a [reasonable adjustment](#)

## **7.0 Action to be taken when Health and Safety advice conflicts with this Policy**

- 7.1 It is recognised that sometimes advice given from a Health and Safety perspective may conflict with this policy. Whilst the Health and Safety at Work Act 1974 and related regulations are prioritised above the Equality Act (in that employers are not expected to place disabled and other staff at inappropriate risk), The Equality Act does require consideration of any potential Reasonable Adjustments that, if implemented, might lessen the risks posed.
- 7.2 All advice has to be reviewed carefully to ascertain the extent to which an adjustment might mitigate or reduce risk, and even apparently hazardous situations may be managed with reasonable adjustments by, for example, adapting procedures, purchasing equipment or providing additional training. The risk assessment process itself may provide opportunities to consider and, where possible, implement reasonable adjustments to remove or reduce unacceptable risk. If, after attempting all Reasonable Adjustments, it is found

that unacceptable risk still remains and a risk assessment is required, it is important to ensure that it:

- Focuses upon facts and not assumptions.
- Assesses the individual and avoids blanket assumptions.
- Involves the member of staff in discussions to identify how any risks may be overcome.
- Applies best medical evidence on prognosis, and associated hazards and risks as this impact upon the individual.
- Relates to the individual and the requirements of the job.
- Considers all relevant occupational factors.
- Identifies the actual duration and frequency of hazardous situations.

- 7.3 Where a risk remains substantial in spite of any control measures and adjustments being implemented, an alternative 'reasonable adjustment' may be re-deployment to another existing vacancy where the risk does not arise. Any such decision, however, must be in consultation with the member of staff, line manager and a HR Advisor. The disabled person has right to representation if he/she wishes. Re-deployment should be to a position where the disabled person has a reasonable chance of fulfilling all core duties of the new role, and where there is provision for re-training prior to assuming the new duties if this is required.

Please refer to Appendix 7 of the Sickness Absence Management Policy and procedure for guidance on redeployment.

- 7.4 If the risk is insubstantial in that there is no adverse impact on others and only to a minimal degree on the disabled person him/herself, and the member of staff states that they are happy to continue working, their wish should be respected where possible. As an employer the Trust is expected so far as is reasonably practical to do all it can to eliminate risk in the workplace, but the law does recognise that all risks cannot be removed absolutely. In this instance, explicit informed consent in writing by the disabled member of staff is essential, and a copy of this must be kept in his/her personnel file, with signatures of the member of staff, his/her manager and HR representative.

## **8.0 Grievance**

Where it is apparent that the only reason the employee is dissatisfied with the existing reasonable adjustment is because the employee would have preferred an alternative adjustment but it is the line managers opinion that this may not be effective in practice, there is no reason to change the adjustment that is already in place for the employee. The sources of support and guidance given at Section 16 may be of help in this situation.

A member of staff who is dissatisfied after reasonable adjustments have been put into place and attempts to resolve issues locally have not worked, employees can raise their concern via the Trusts grievance procedure, which is available on E source.

## 9.0 Exclusions

The only circumstances that permit less favourable treatment occur when the employee genuinely cannot do the job for which they are employed or any other job that might reasonably offered, or when reasonable adjustments to the workplace are either impracticable or demonstrably beyond the resources available to the Trust.

## 10.0 Training and Resources

The Trust acknowledges the importance of awareness and skills training for managers to ensure the effective implementation of this Policy. This is now incorporated as part of the line managers training instigated by learning and development team. Working in partnership the Human Resource Service will provide appropriate training, support and guidance to managers and staff through a variety of means including formal skills training, informal Policy Briefings, Managing ill health workshop, HR in a day workshop or Guidance Toolkits.

## 11.0 Monitoring Compliance and Effectiveness

Criteria	Measurable	Frequency	Reporting to	Action Plan/Monitoring
Number of Tailored Adjustment Agreements implemented	Year Average	Monthly	SWG	Head of HR/Line Manager
No of grievances raised in relation to the implementation of reasonable adjustments	Year Average	Monthly	SWG	Head of HR/Line Manager

### 11.1 Management and Review of Policy

The Human Resources Team will be responsible for the management of this policy. The policy may be reviewed and amended at any time if is deemed necessary. Notification of any changes to policies will be communicated to all staff.

11.2 Staff should be aware that the Trust intranet site version of this document is the only version that is maintained and controlled.

Note: Any printed copies should be viewed as 'uncontrolled' and as such may not necessarily contain the latest updates and amendments.

## 12.0 Standards and Key Performance Indicators:

TARGET/STANDARDS	KEY PERFORMANCE INDICATOR
<p>Care Quality Commission fundamental standards. Staffing - the provider of your care must have enough suitably qualified, competent and experienced staff to make sure they can meet these standards.</p> <p>Their staff must be given the support, training and supervision they need to help them do their job. (21) of the Health &amp; Social Care Act (2008) (Regulated Activities Regulations 2010 <u>CQC essential standards</u>)</p>	<p>That the Trust maintains compliance with CQC registration standards, this policy supports outcome standards 14</p>

## 13.0 Dissemination and Implementation

We will communicate our policy clearly to employees at all levels of the organisation, as well as to other individuals and organisations that come into contact with the Trusts, such as general practitioners, job applicants, and contractors. Wherever appropriate we will ensure that contractors and other parties abide by the standards and requirements of this policy.

- All new employees will receive information about this policy and their responsibilities as part of their induction to the Trust.
- Existing employees will be briefed about this policy by their line manager.
- Progress reports and updates, including monitoring data, will be communicated to employees through staff newsletters and team-briefings.

## 14.0 Due Regard

- 14.1 The Trust is committed to an environment that promotes equality and embraces diversity in its performance as an employer and service provider. It will adhere to legal and performance requirements and will mainstream equality and diversity principles through its policies, procedures and processes.
- 14.2 This policy has been developed in context of paying due regard to the Public Sector Equality Duty (Equality Act 2010) to eliminate unlawful discrimination, harassment, victimisation; and advance equality of opportunity and foster good relations.
- 14.3 The Trust will endeavour to make reasonable adjustments to accommodate any employee.
- 14.4 Due regard will also be demonstrated through the use of human resources best practice and have adherence to all relevant employment legislation.
- 14.5 In addition to the examples highlighted above, equality monitoring of all relevant protected characteristics to whom the policy applies will be undertaken. Robust actions to reduce, mitigate and where possible remove any adverse impact will be agreed and effectively monitored.

14.6 This policy will be continually reviewed to ensure any inequality of opportunity for service users, patients, carers and staff is eliminated wherever possible (*please see Appendix 6 for Due Regard*).

## **15.0 Associated Policies**

To support effective implementation and understanding the following policies are signposted for additional guidance.

- Carers Policy
- Dignity at Work Policy
- Disciplinary Policy
- Equality Diversity and Human Right Policy
- Flexible Working Policy
- Grievance Procedure
- Health and Safety Policy
- Recruitment and Selection Policy
- Sickness Absence Management Policy and Procedure
- Special Leave Policy
- Performance Management Policy and Procedure

These policies can be found on [eSource](#)

## 16.0 Useful Contacts and links

- **Human Resources Team Secretary on** 0116 295 7520, who will direct you to the appropriate HR Advisor.
- Equality and Diversity Team  
0116 295 7520 or 0116 295 7530  
Email: [equality@leicspart.nhs.uk](mailto:equality@leicspart.nhs.uk)
- Occupational Health  
0116 2255926  
Email: [oh.lpt@uhl-tr.nhs.uk](mailto:oh.lpt@uhl-tr.nhs.uk)
- **Direct Gov** <http://www.direct.gov.uk/>
- **Access to Work Programme**  
The Access to Work is a telephone based service. **When making an application quote ER1.**  
Tel: 020 8426 3110  
Textphone: 02920 644 886  
E-mail: [atwosu.london@dpw.gsi.gov.uk](mailto:atwosu.london@dpw.gsi.gov.uk)
- Equality and Human Rights Commission -  
<https://www.equalityhumanrights.com>
- Macmillan Cancer - Information working with cancer -  
<https://www.macmillan.org.uk>
- Learning disabilities DobsonsChoice - <http://www.dobsonschoice.co.uk>
- Access to work <https://www.gov.uk/access-to-work>
- Department of work and pensions  
<http://www.dwp.gov.uk/supplying-dwp/what-we-buy/access-to-work/>
- Mosaic shaping disabilities services provide support for people living in Leicester city <http://www.mosaic1898.co.uk/>
- Helping hands provide support for people living in Leicestershire County Council <http://www.helpinghandsadvice.co.uk>

## 17.0 References

[Guidance on matters to be taken into account in determining questions relating to the definition of disability](#)

Providing disability and reasonable adjustments A worker's guide to evidence under the Equality Act 2010. 4<sup>th</sup> Edition

## Appendix 1

### The Meaning of Disability

**1. When is a person disabled?**

A person has a disability if he/she 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.

**2. What conditions / impairments are covered by the Act?**

With the exception of cancer, HIV and multiple sclerosis, there is no definitive list of conditions / impairments which are covered by the Act. Each case must be considered individually, based on the definition given above taking into consideration the effects of the impairment on the individual. The definition might include, for example, people with the following:

- sensory impairment (vision and hearing)
- heart conditions
- musculoskeletal conditions such as back problems
- recurring or fluctuating conditions, such as arthritis or asthma
- mental health problems, such as depression
- epilepsy
- dyslexia
- diabetes
- severe disfigurements
- learning disabilities

It should also be noted that individuals who are registered as blind or partially sighted by a local authority, or who are certified as being blind or partially sighted by a consultant ophthalmologist are automatically treated under the Act as being disabled.

If an individual has been disabled in the past due to a condition from which they have since recovered or from which they are in remission, then they are still protected from discrimination, victimisation or harassment by the Act

**3. What about people who have recovered from a disability?**

People who have had a disability within the definition are protected from discrimination even if they have since recovered.

**4. What does 'impairment' cover?**

It covers physical or mental impairments; this includes sensory impairments, such as those affecting sight or hearing.

**5. Are all mental impairments included?**

The term 'mental impairment' is intended to cover a wide range of impairments relating to mental functioning, including what are often known as learning disabilities.

**6. What is a 'substantial' adverse effect?**

A substantial adverse effect is something which is more than a minor or trivial effect. The requirement that an effect must be substantial reflects the general understanding of disability as a limitation going beyond the normal differences in ability which might exist among people.

**7. What is a 'long-term' effect?**

A long-term effect of an impairment is one:

- which has lasted at least 12 months, or
- where the total period for which it lasts is likely to be at least 12 months, or
- Which is likely to last for the rest of the life of the person affected.

Effects which are not long-term would therefore include loss of mobility due to a broken limb which is likely to heal within 12 months and the effects of temporary infections, from which a person would be likely to recover within 12 months.

**8. What if the effects come and go over a period of time?**

If an impairment has had a substantial adverse effect on normal day-to-day activities but that effect ceases, the substantial effect is treated as continuing if it is likely to recur; that is if it is more probable than not that the effect will recur.

**9. What are 'normal day-to-day activities'?**

They are activities which are carried out by most people on a fairly regular and frequent basis.

The term is not intended to include activities which are normal only for a particular person or group of people, such as playing a musical instrument, or a sport, to a professional standard or performing a skilled or specialised task at work.

However, someone who is affected in such a specialised way but is also affected in normal day-to-day activities would be covered by this part of the definition. The test of whether an impairment affects normal day-to-day activities is whether it affects one of the broad categories of capacity listed in Schedule 1 to the Act. They are:

- 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, or
- perception of the risk of physical danger.

**10. What about treatment?**

Someone with an impairment may be receiving medical or other treatment which alleviates or removes the effects (though not the impairment). In such cases, the treatment is ignored and the impairment is taken to have the effect it would have had without such treatment. This does not apply if substantial adverse effects are not likely to recur even if the treatment stops (i.e. the impairment has been cured).

Members of staff requiring treatment for an impairment must be allowed time off work to attend. This must be recorded as disability related absence and not counted as sickness absence. Please cross-reference the absence management policy for more information

**11. Does this include people who wear spectacles?**

No. The sole exception to the rule about ignoring the effects of treatment is the wearing of spectacles or contact lenses. In this case, the effect while the person is wearing spectacles or contact lenses should be considered.

**12. Are people who have disfigurements included?**

People with severe disfigurements are covered by the Act. 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.

**13. Are there any other people who are automatically treated as disabled under the Act?**

Anyone who has HIV infection, Cancer or Multiple Sclerosis is automatically treated as disabled under the Act. In addition, people who are registered as blind or partially sighted, or who are certified as being blind or partially sighted by a consultant ophthalmologist are automatically treated under the Act as being disabled. People who are not registered or certified as blind or partially sighted will be covered by the Act if they can establish that they meet the Act's definition of disability. Please refer to the HIV in Employment Policy for further information and guidance regarding HIV.

**14. What about people who know their condition is going to get worse over time?**

Progressive conditions are conditions which are likely to change and develop over time. Where a person has a progressive condition he/she will be covered by the Act from the moment the condition leads to an impairment which has some effect on ability to carry out normal day-to-day activities, even though not a substantial effect, if that impairment is likely eventually to have a substantial adverse effect on such ability.

**15. Are people with genetic conditions covered?**

If a genetic condition has no effect on ability to carry out normal day-to-day activities, the person is not covered. Diagnosis does not in itself bring someone within the definition. If the condition is progressive, then the rule about progressive conditions applies.

**16. Are any conditions specifically excluded from the coverage of the Act?**

Yes. Certain conditions are to be regarded as not amounting to impairments for the purposes of the Act. These are:

- addiction to or dependency on alcohol, nicotine, or any other substance (other than as a result of the substance being medically prescribed)
- seasonal allergic rhinitis (e.g. hayfever), except where it aggravates the effect of another condition
- tendency to set fires
- tendency to steal
- tendency to physical or sexual abuse of other persons
- exhibitionism
- Voyeurism.

Also, disfigurements which consist of a tattoo (which has not been removed), non-medical body piercing, or something attached through such piercing, are to be treated as not having a substantial adverse effect on the person's ability to carry out normal day-to-day activities.

Source From "the Duty to Promote Disability Equality: Statutory Code of Practice, Appendix B"]

## Appendix 2

### Tailored Adjustment Agreement

This is a record of the reasonable adjustments agreed between (employee name) and (*line manager name*).

This agreement may be reviewed and amended as necessary with the agreement of both parties:

- At any regular one-to-one meeting.
- At a return to work meeting following a period of sickness absence.
- At six monthly and/or annual appraisals.
- Before a change of job or duties or introduction of new technology or ways of working.
- Before or after any change in circumstances for either party.

#### Employee

My disability in the workplace

My disability has the following impact on me at work

I need the following agreed reasonable adjustments (tick as relevant)		Date budget holder contacted if relevant	Date implemented
Access to Work	<input type="checkbox"/>		
Occupational Health	<input type="checkbox"/>		
Health & Safety	<input type="checkbox"/>		
Other: Please state	<input type="checkbox"/>		

**Wellness at work – employees who have fluctuating mental or physical**

**disabilities**

On a 'good day' my disability has the following impact on me at work
When things are breaking down. The following symptoms are indications that I am not well enough to be at work

I will let you know if there are changes to my condition which have an effect on my work and/or if the agreed adjustments are not working. We will then meet to discuss any further reasonable adjustments or changes that should be made.

If you notice a change in my performance at work or feel these reasonable adjustments are not working I would be happy to meet to discuss what needs to be done.

An up to date copy of this form will be retained by HR.

A copy of this form may also be given to a new or prospective line manager with the prior consent of the employee.

**Employee signature:**

**Date:**

**Manager signature:**

**Date:**

**Appendix 3**

**Disability Leave Request Form**

For Completion by member of staff

Name	Division/ Service
Number of days requested	Date(s) of Requested Absences
Number of days taken to date in the current year (April to March):	
Reasons for current request:	
Signed	Date

**For Completion by Line Manager**

What impact will this absence have on service delivery	
What actions can be put in place to mitigate any negative impact on service delivery?	
Approved/Not Approved	
If disability leave absence not approved, please give reasons	
Signature of Line Manager	Date

Copies of the completed form should be sent to your line manager

## Appendix 4

### Frequently Asked Questions

**Q1. What is a reasonable adjustment?**

A. A reasonable adjustment is an alteration that an employer could make that would enable a disabled person to continue to carry out their duties without being at a disadvantage compared to others. Under the Equality Act 2010, there is a **legal duty** on employers to make these reasonable adjustments for disabled employees.

**Q2. How do I know if I am a disabled person according to the law**

A. The Equality Act 2010 says that a disability is a physical or mental impairment, which has a substantial and long-term adverse effect on your ability to carry out normal day-to-day activities. This definition includes impairments or medical conditions such as Cancer, HIV or MS.

**Q3. What does a reasonable adjustment include?**

A. A reasonable adjustment may include 'provisions, criteria and practices', 'physical features' and 'provision of auxiliary aids'.  
The code of practice for (employment) for the Equality Act gives the following examples of reasonable adjustments:

- Making adjustments to premises
- Allocating some of the disabled person's duties to another person
- Transferring them to fill an existing vacancy
- Altering their working hours
- Allowing absence for rehabilitation, absence or treatment
- Arranging or giving extra training
- Acquiring or modifying equipment
- Modifying instructions or reference manuals
- Modifying procedures for testing or assessment
- Providing a reader or interpreter
- Providing supervision

**Q4. What is the purpose of an adjustment?**

A. The purpose of implementing an adjustment for you is to ensure that you are able to perform to the best of your ability. This applies to whether an adjustment is made during the recruitment process or in the workplace itself.

**Q5. What type of support is available to me if I have a disability?**

A. The Trust offers a wide range of support to disabled members of staff. The extent of this support would be dependent on the needs and circumstances of the individual, who would be consulted on any reasonable adjustments which may need to be made. Two people with the same disability are not likely to need the same adjustments, as everyone is different, therefore adjustments would be made on a case by case basis.

In some cases, it may be possible to involve **Access to Work**, who are able to assess an individual within the workplace and recommend reasonable adjustments. These will not always be physical adjustments to the workplace.

If you feel you require adjustments or any other type of support, please contact your line manager or HR representative.

**Q6. What happens if my condition changes**

A. It is likely that your condition will change over time, and consequently your support needs. It is important that you continue to be open and honest about what you require and to engage in the relevant discussions to fulfil your role.

**Q7. What is Access to Work?**

A. Access to Work is a scheme which is run by Jobcentre Plus. It can provide disabled people with financial support to help with increased costs for things such as travelling to work by taxi instead of using public transport, paying for a support worker, paying for specialized equipment or for physical alterations to the employer's premises.

Access to Work may also be able to help if a disabled person needs a communicator or BSL interpreter at a job interview.

**Q8. Am I eligible for Access to Work?**

A. If you are disabled and feel that you may need help through Access to Work you will need to be:

- Already working in paid employment
- Unemployed and about to start a new job
- Unemployed and about to start a Work Trial
- Self-employed

Your impairment must stop or prevent you from being able to do parts of your job or the job you have applied for. It may be that your impairment does not have a big effect on what you can do every day but it must be a long-term effect rather than something short-term like a broken arm.

**Q9. How do I contact Access to Work?**

A. If you feel that your employment is likely to be affected by your impairment and that this impairment is likely to last for at least 12 months, you should contact either your regional Access to Work contact centre, your line manager or HR representative

**South West England; Wales; West Midlands; East Midlands  
Jobcentre Plus**

Access to Work Operational Support Unit  
Alexandra House  
377 Cowbridge Road East  
Cardiff CF5 1WU

**Q10. What adjustments is the Trust legally required to make for disabled candidates and employees?**

A. An employer has a duty to make 'reasonable adjustments'. What is deemed reasonable depends on the individual case and circumstances, including how necessary the adjustment is, how practical it is, and the financial or other resources of the organisation.

**Q11. Who is responsible for implementing adjustments during the recruitment process?**

A. Organising for adjustments to be made during the recruitment process is the responsibility of both the organisation and the individual. The organisation cannot be expected to guess what someone requires and the applicants cannot expect the organisation to guess what they need. Both parties have to communicate. The more open, honest and timely the communication, the more efficient the implementation process will be.

**Q12. Do I have to tell my employer that I need an adjustment?**

A. It is understandable that you may not wish to talk about the nature of your disability to your employers. However, in return, you must understand that it is difficult for your employers to provide what you need if you don't tell them. Should you not wish to disclose the nature of your disability you could instead only discuss the impact of your condition on your ability to undertake the role. Whilst employers would encourage you to share so that maximum support can be offered, there is no obligation on you to disclose either the nature of your condition or its impact.

**Q13. Who pays?**

A. The law forbids the employer from making a disabled worker pay for any of these adjustments, and financial assistance may be available from the Government for the employer under access to work funding if the disabled person qualifies for it (see web link to access to work funding below).

**Q14. What is Disability leave?**

A. A person with a disability should have their disability-related leave counted as a distinct and separate thing, and it can be argued for as a reasonable adjustment.

**Useful Links**

- **EHRC – the duty to make reasonable adjustments for disabled people**  
<http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/the-duty-to-make-reasonable-adjustments-for-disabled-people/>
- **TUC Disabled worker guide**  
<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=0CFQQFjAA&url=http%3A%2F%2Fwww.tuc.org.uk%2Fextras%2Fdisabilityandwork.pdf&ei=GxcAUIHtGI7BswaYwsyJBg&usq=AFQiCNHGF6Tws0ugBY6qBatKR6DSMhp6Uw>
- **ACAS offer an equality and diversity advisory service to help employers assess what constitutes a reasonable adjustment.**  
<http://www.acas.org.uk/index.aspx?articleid=3496>
- **Access to work funding**  
[http://www.direct.gov.uk/en/disabledpeople/employmentsupport/worksschemesandprogrammes/dg\\_4000347](http://www.direct.gov.uk/en/disabledpeople/employmentsupport/worksschemesandprogrammes/dg_4000347)

## Appendix 5

### Reasonable Adjustments Case Law

The Equality Act 2010 states as an example of a reasonable adjustment:

*“Allowing the person to be absent during working hours or training hours for rehabilitation, assessment or treatment...”*

#### **A practical example may be:**

Allowing an employee who has become disabled more time off during work than would be allowed to non-disabled employees to enable him to have rehabilitation training. A similar adjustment would be appropriate if a disability worsens or if a disabled person needs occasional treatment anyway.

#### **The Act also states:**

‘It might be reasonable for employers to have to take other steps, which are not given as examples in the Act. These steps could include allowing a disabled employee to take a period of disability leave.’

#### **A practical example may be:**

An employee who has cancer needs to undergo treatment and rehabilitation. His employer allows a period of disability leave and permits him to return to his job at the end of this period.

Below are examples of recent Case Law in relation to Reasonable Adjustments and disability leave:

#### **Case study 1. Burke v (1) Clinton Cards plc (2) Walker (2010)**

An employer that failed to make reasonable adjustments for an employee who had cancer was ordered to pay more than £100,000 in compensation. When the claimant, Mrs Burke, an area sales manager, was diagnosed with breast cancer, adjustments were made by reducing the number of stores for which she was responsible. However, when a new regional manager, Mr John Walker, took over, he increased her workload and was critical of her performance on a number of occasions, paying no regard to the effect of a heavier workload on her health, and showing no interest in the effect on her work of the treatment for cancer that she was undergoing. She resigned and claimed unfair constructive dismissal and disability discrimination.

On top of the compensation, the tribunal noted that had the Equality Act been in effect at the time (it became law in the interim period) it would have made a number of recommendations relating to:

- the method of recording meetings with employees - "the respondent's approach is lamentable, particularly where a disabled employee is to change line managers";
- the training of individuals - commenting that the training was "inadequate", it would have recommended "significant equal opportunities training for all senior managers"; and

- training in respect of disability discrimination - for a company of its size and geographical spread, it would have expected it to be doing more than "paying 'lip service' to equal opportunities policy".

### **Case Study 2. Cox v. Post Office**

The Employment Tribunal found that the employer, a large organisation, could reasonably cope with the claimant's absences for reasons of asthma and that therefore these disability-related absences should be disregarded, as a reasonable adjustment (disability leave). This approach was then followed in a number of subsequent tribunal rulings.

### **Case Study 3. Pousson v. British Telecom plc**

The claimant, who had diabetes, had a number of absences due to infections related to his condition and the employer's Occupational Health department had confirmed the connection. The employer had invoked their computer-based attendance procedures four times over two years, and as a result of enforcing these procedures the claimant had left work following an accident after he was not permitted to leave his desk to administer his medication. The Employment Tribunal found that the attendance procedure should not have been applied because the claimant was disabled, and that this amounted to less favourable treatment. The employer's appeal against this finding was dismissed.

### **Case Study 4. Royal Liverpool Children's NHS Trust v. Dunsby**

Employment Appeals Tribunal overturned a tribunal finding of disability-related less favourable treatment where the worker had been dismissed using the sickness absence procedure. The higher court said that the DDA (now Equality Act 2010) does not impose an absolute obligation on the employer not to dismiss someone whose absence is wholly or in part on grounds of ill-health due to disability; it requires only that the dismissal is justified.

### **Case Study 5. Jennings v Barts and the London NHS Trust 2013**

In Jennings v Barts and the London NHS Trust the EAT has found that it would not have been a reasonable adjustment to exempt an employee from the Trust's absence management policy.

The EAT upheld the decision of the first instance tribunal that there had been no failure in the reasonable adjustments duty following the dismissal of a disabled employee who was on long-term sick leave.

The EAT also found that the employer was not unreasonable in dismissing the employee in spite of a recommendation from occupational health that a phased return to work might be undertaken.

The facts of this case are that Mr Jennings worked in IT Support. He was with the Trust for 9 years before being dismissed in January 2008 on grounds of poor attendance due to ill health. He had intermittent health-related absences throughout his employment. The Trust rigorously applied its short-term absence policy and instituted disciplinary proceedings. A series of meetings were arranged, many of which were postponed by Mr Jennings for medical reasons. Some were held in his

absence because he failed to attend. A first written warning was issued in October 2007. Without prior notice and in breach of its own policy the Trust then used that warning to commence a long-term absence procedure. At a final stage meeting under the long-term procedure a decision was taken to dismiss. Mr Jennings's absences were causing pressure on his colleagues and his department. In spite of an OH report suggesting a phased return was appropriate and might be commenced there was a possibility Mr Jennings would not return to work and no date had been set. He was dismissed. His appeal against dismissal was unsuccessful.

A tribunal rejected Mr Jennings's claims for unfair dismissal and disability discrimination. The tribunal held that Mr Jennings had "*ample and fair opportunity*" to engage in the process but failed to do so. The tribunal found that the OH report suggesting a phased return was optimistic and that in spite of it being what the employee probably wanted to hear (and needed to hear) Mr Jennings was himself pessimistic about a return. Mr Jennings also had no proposals to make about his employment or suggestions for redeployment despite having ample opportunity to participate. He also failed twice to return a stress questionnaire he had been asked to complete.

In relation to reasonable adjustments the tribunal held that it was not *reasonable* for the Trust to disapply its short-term absence policy in spite of the fact that it accepted that Mr Jennings was disabled for the purposes of the Equality Act. It was not reasonable for the Trust to have to tailor its policies to suit Mr Jennings.

The EAT also ruled that the employer could have "*imputed knowledge*" for the purposes of a reasonable adjustments claim even if the wrong diagnosis had been attached to the knowledge at the time. A diagnosis of PTSD was proffered which was subsequently relabelled paranoid personality disorder and major depression. There was still sufficient information from which to deduce that Mr Jennings was suffering from an impairment which was sufficiently long-standing and which interfered with his normal day to day activities so as to amount to a disability.

The EAT noted in this case that Mr Jennings's absence record was "*severely poor*". In an eight month period he had been absent for 100 days. The EAT saw no basis to interfere with the Trust's conclusion that on the facts the absence could not be tolerated under the absence management policy. The dismissal was fair and no disability discrimination had occurred

### **Case Study 6. Chief Constable of South Yorkshire Police v Jelic (2010)**

The EAT upheld an employment tribunal finding that it would have been a reasonable adjustment to swap the job of a serving police officer with chronic anxiety syndrome with that of another police constable.

The claimant was a police constable who developed chronic anxiety syndrome. As a result, he had periods of sick leave for stress-related illness. When he returned to work, he was assigned a desk job. A series of reports from the force's occupational health adviser said he was not fit to return to front-line duties. Eventually, it was decided to medically retire him because he was carrying out the duties of a staff operator and was permanently disabled from performing the full duties of a police officer.

An employment tribunal upheld a disability discrimination claim, finding that in the particular circumstances of the case it would have been reasonable to swap the jobs

being undertaken by the claimant and another police constable. The tribunal identified a particular constable whose job was suitable and suggested that, if necessary, in a service accustomed to discipline, the other police officer could be required to switch jobs.

### **Case study 7. Cottrell v North Tyneside Disability Forum (2010)**

An employment tribunal held that an employer failed to make reasonable adjustments by not taking steps to hold a meeting face to face with the claimant, allowing her to express concerns that, as a deaf person, she was not able to raise satisfactorily in any other way – for example, through a phone call.

Mrs Cottrell was employed under a contract to personally carry out work for the respondent, as a reflexologist/complementary health therapist. She is deaf, and needs a lip speaker – someone professionally trained to be easy to lip-read – for professional and business situations. There was a series of emails between Mrs Cottrell and the chief officer of the respondent charity, Ms Adams. Mrs Cottrell had raised some concerns by email as she was no longer getting the support she had been used to. She several times requested a face-to-face meeting, with a lip speaker present, offering dates when she was available. However, no meeting took place and five months later she was informed that her services would no longer be required. The tribunal held that the respondent had not made reasonable adjustments for the claimant, as it had not taken steps to set up a meeting, despite the claimant providing dates. It found that a meeting with a lip speaker would have allowed the claimant to raise her concerns in a similar manner to a non-disabled person. Arranging such a meeting, it said, was practicable as there was little financial cost and it would not disrupt the respondent's activities. It therefore held that the respondent had failed to make reasonable adjustments, adding: "It was a charitable organisation whose object was to ensure the rights of disabled persons and improve their quality of life. It had the required knowledge about the claimant as a disabled person."



## Due Regard Equality Analysis

Section 1	
<b>Name of activity/proposal</b>	Reasonable Adjustment Policy
<b>Date Screening commenced</b>	30 <sup>th</sup> September 2016
<b>Directorate / Service carrying out the assessment</b>	Equality and Human Rights Team
<b>Name and role of person undertaking this Due Regard (Equality Analysis)</b>	Sandy Zavery
<b>Give an overview of the aims, objectives and purpose of the proposal:</b>	
<b>AIMS:</b> The aim of the policy is provide support, guidance and advise on making 'Reasonable Adjustments' for staff who have a disability that is recognised and protected under the Equality Act 2010.	
<b>OBJECTIVES:</b>	
<ul style="list-style-type: none"> <li>• To raise awareness amongst all managers and staff of the moral, social and legal obligations to make reasonable adjustments for people who are disabled or who have a long term health condition, and in particular, the requirements of the under the Act.</li> <li>• To encourage disabled staff to declare their information which enables the Trust to abide request for 'Reasonable Adjustments' and to feel confident in the knowledge that they will be supported by the Trust should they require them.</li> <li>• To provide managers staff who are responsible for making adjustments with information about their obligations under this policy, the procedure to follow, examples of adjustments that can be made and sources of support and guidance.</li> <li>• To provide staff with the procedure to be followed if they feel that this policy is not being adhered to.</li> <li>• To provide staff with the procedure to be followed if Health and Safety or Occupational Health advice conflicts with this policy statement.</li> </ul>	
Section 2	
Protected Characteristic	If the proposal/s have a positive or negative impact please give brief details
Age	The policy has a positive impact, as the aim is to support staff who have or may through the duration of their employment with the Trust have a disability that impacts on them carrying out their role.  This policy will provide guidance on the reasonable adjustments staff require to carry out the full responsibilities within their role.
Disability	As above
Gender reassignment	As above
Marriage & Civil Partnership	As above
Pregnancy & Maternity	As above
Race	As above
Religion and Belief	As above
Sex	As above
Sexual Orientation	As above
Other equality groups?	As above
Section 3	
<b>Does this activity propose major changes in terms of scale or significance for LPT? For example, is there a clear indication that, although the proposal is minor it is likely to have a major affect for people from an equality group/s? Please tick appropriate box below.</b>	
Yes	No - ✓
High risk: Complete a full EIA starting click <a href="#">here</a> to	Low risk: Go to Section 4. <span style="float: right;">✓</span>

proceed to Part B			
<b>Section 4</b>			
<b>If this proposal is low risk please give evidence or justification for how you reached this decision:</b>			
The decision is based on the positive outcome staff will have when reasonable adjustments are implemented to support them carrying out their role.			
<b>Signed by reviewer/assessor</b>	Sandy Zavery	<b>Date</b>	30/09/16
<i>Sign off that this proposal is low risk and does not require a full Equality Analysis</i>			
<b>Head of Service Signed</b>	Sarah Willis	<b>Date</b>	30/09/16

## The NHS Constitution

### NHS Core Principles – Checklist

**Please tick below those principles that apply to this policy**

The NHS will provide a universal service for all based on clinical need, not ability to pay. The NHS will provide a comprehensive range of services

<b>Shape its services around the needs and preferences of individual patients, their families and their carers</b>	<input type="checkbox"/>
<b>Respond to different needs of different sectors of the population</b>	<input type="checkbox"/>
<b>Work continuously to improve quality services and to minimise errors</b>	<input checked="" type="checkbox"/>
<b>Support and value its staff</b>	<input checked="" type="checkbox"/>
<b>Work together with others to ensure a seamless service for patients</b>	<input checked="" type="checkbox"/>
<b>Help keep people healthy and work to reduce health inequalities</b>	<input checked="" type="checkbox"/>
<b>Respect the confidentiality of individual patients and provide open access to information about services, treatment and performance</b>	<input checked="" type="checkbox"/>