



REASONABLE ADJUSTMENTS GUIDANCE

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Version 1

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1. Commitment

1.1 NHS Lothian is committed to ensuring:

- equality of opportunity, support and fair treatment for all individual employees and applicants in order that their specific needs are addressed, and their abilities recognised.
- a culture where there is proactive, “open” and supportive discussion between staff and their managers to allow joint decisions to be made. This proactive approach will create a mutual obligation on staff, managers and colleagues to actively promote a culture which encourages inclusion and understanding. This will benefit current and new employees and the patients for whom we provide care.
- that its workforce reflects the diverse population it serves and will take positive measures to achieve this.
- that disabled employees are treated as individuals, and that their abilities and expertise are valued within the organisation. It is committed to challenging stigma and stereotypes and providing positive role-models. By providing support to employees with disabilities, it is recognised that they can thrive and more importantly be seen to thrive by colleagues which is positive for everyone.
- the removal of barriers which disable individuals in the workplace through training and support. The barriers faced may be environmental, institutional or attitudinal, or they may arise from issues related to communication or information. This may require adjustments being made to the working environment or employment arrangements, or the provision of specialist equipment. These adjustments will be made wherever reasonable and within a reasonable timeframe.
- discrimination, victimisation or harassment in the workplace because of disability is not tolerated. Any such behaviours will be investigated, and appropriate action taken under the under the NHS Scotland Workforce Conduct Policy. The NHS Scotland Bullying and Harassment Policy provides additional information on how to raise concerns on harassment related to disability.

2. Aim

2.1 This guidance aims to:

- support individuals throughout the employment relationship, from recruitment to the retention of staff who become disabled or whose individual circumstances related to their disability changes.
- raise awareness of managers' responsibilities on behalf of NHS Lothian to support staff with a disability in a positive and constructive manner.

3. What is Disability?

- 3.1 Disability is defined in the Equality Act 2010 as being 'a physical or mental impairment' which has a substantial and long-term adverse effect on an individual's ability to carry out normal day to day activities. In the Act, 'substantial' means more than minor or trivial. In addition, some long-term conditions e.g. cancer, HIV and multiple sclerosis are deemed disabilities under the Act from the point of diagnosis. Although physical or mental impairments may be considered a disability in terms of the Act, the individual may not consider themselves disabled.
- 3.2 In some circumstances, progressive conditions and those with fluctuating or recurring effects will also be considered disabilities. Examples of progressive conditions include motor neurone disease, muscular dystrophy, and forms of dementia. Examples of conditions with fluctuating or recurring effects include rheumatoid arthritis, myalgic encephalitis (ME), chronic fatigue syndrome (CFS), fibromyalgia, epilepsy, and mental health conditions such as depression, bipolar disorder, and obsessive-compulsive disorder.
- 3.3 Neurological differences are also classed as disabilities under the Equality Act 2010. These differences can include those labelled with Dyspraxia, Dyslexia, Attention Deficit Hyperactivity Disorder (ADHD), Dyscalculia, Autistic Spectrum, Tourette Syndrome, and others.
- 3.4 Conditions defined as a disability evolve over time as a result of expanding case law and tribunal decisions. Not everyone with the above conditions will necessarily pass the legal test for disability, as it will depend on whether they are assessed as meeting the definition from the Equality Act 2010.

4. What does the law require?

- 4.1 Under the Equality Act 2010, disabled people have the legal right to fair and equitable treatment. It also protects non-disabled people against direct disability discrimination where they are perceived to have a disability or are associated with a disabled person. The Act places an Equality Duty on public authorities, to have due regard in the exercise of their functions, to:
- a. Eliminate discrimination, harassment and other unlawful behaviour;
 - b. Advance equality of opportunity; and
 - c. Foster good relations.
- 4.2 The Equality Act also advises that "advancing equality" may involve:

- taking action to remove or minimise disadvantages that are connected to that characteristic;
 - taking steps to meet the needs of persons with a relevant protected characteristic;
 - encouraging participation in public life or in any other activity in which participation is disproportionately low.
- 4.3 The Equality Duty includes specific requirements about taking steps to account for disabled persons' disabilities and, in the area of fostering good relations, for tackling prejudice and promoting understanding.
- 4.4 Disabled people are specifically protected from:
- Direct discrimination: being treated less favourably because of disability;
 - Indirect discrimination: where a disabled person would be disadvantaged by a provision, criterion or practice applied to everyone, which would put a disabled person or people sharing a particular disability at a disadvantage;
 - Discrimination arising from disability: being treated unfavourably because of something arising in consequence of one's disability;
 - Harassment: when a person engages in unwanted conduct related to disability which has the purpose or effect of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person.
 - Victimisation: being treated less favourably because a person has brought a claim or supported others to bring a claim or complaint of disability discrimination or harassment.
- 4.5 This section outlined the legal requirements with which NHS Lothian has a responsibility to comply. What is more important is that NHS Lothian, through its' managers and supervisors, creates a culture where this guidance forms the basis of good and supportive "people management". It should not be applied because there is a legal requirement to do so, but because it is the right thing to do.

5. Supporting Staff within Employment

- 5.1. NHS Lothian strives to be an exemplary employer and an "employer of choice" by doing the following to support staff with a disability:
- Creating a positive organisational culture where every individual employee is valued for the specific skills that they bring with them into the workplace;
 - Enabling staff to feel "empowered" and to speak up when they require support;

- Helping staff to feel “safe” in sharing their personal information regarding their disability in order that the organisation can continue to improve support and awareness for the benefit of everyone;
 - Creating a management culture where supporting staff with a disability is delivered in a positive manner and based upon the desire to retain valuable skills within the organisation and not solely on any legal requirement to do so.
- 5.2. NHS Lothian recognises it has a duty to make reasonable adjustments for disabled employees. NHS Lothian aims to ensure that it takes all reasonable steps to remove or adapt any provision, criterion or practice, or physical feature of premises that may put a disabled person at a disadvantage at any stage of employment.
- 5.3 Positive consideration of reasonable adjustments supports the values contained within the NHS Lothian Work Well Strategy. As part of that commitment one of the ten guiding principles of the Work Well strategy is: Greater wellbeing equity.

6. Management Responsibilities

General

- 6.1. There is a positive duty on all managers and supervisors to take into account the needs of disabled applicants or staff who become disabled by creating a management culture that enables them to discuss the support they require to ensure that they are able to focus on their individual skills. It is essential that staff feel that their managers care about their wellbeing. This requires that leaders and managers commit to engage and proactively support the creation of a healthier and happier culture for staff.
- 6.2. Managers should ensure that where individuals share personal information it is treated confidentially and dealt with appropriately. It is also important that for any discussion to be as effective as possible there is adequate preparation for the meeting by the manager and the employee. Adequate time should be provided for the discussion. It should be held in private with no interruptions.
- 6.3. Wherever it is appropriate, managers should seek advice and guidance from, and build ongoing relationships with, appropriate, relevant organisations. These include organisations such as Access to Work, who can offer specialist advice on adaptations, equipment or training. Advice can also be obtained from the Occupational Health Service, HR Enquiries and the Disabled Employee Network.

6.4 Reasonable adjustments should also be considered in the following circumstances:

- Where there is any service redesign or changes made to any processes or systems;
- Where there is any organisational change which impacts upon the individual (or colleagues') role which may affect the efficacy of the reasonable adjustments that have been put in place.

Recruitment

6.5. The capability of the individual to perform in the position will be the major selection criterion.

6.6. The hiring manager/ interview panel will have regard to their duty to make reasonable adjustments to ensure that an applicant with a disability is not placed at a substantial disadvantage in comparison with individuals who do not have a disability.

6.7. It is recognised that applicants with disabilities may face challenges during the recruitment process such as:

Barrier	Possible solution
Travel and access	Interviewed by video conference
Communication	Interpreter/job coach/ interview questions being made available before the interview
People's assumptions	Interview panel training to increase awareness and interview skills to mitigate this barrier
More examples of reasonable adjustments during the recruitment and selection process can be found on HR Online: Disability Guidance - Reasonable Adjustments (scot.nhs.uk)	

6.8. The recruitment team will pro-actively assist with requests and will provide early opportunity for applicants to discuss what NHS Lothian can do to assist.

6.9. Recruitment paperwork, including advertisements, job descriptions and person specifications, will be reviewed to ensure that there is no discrimination against applicants with disabilities.

6.10. NHS Lothian are participants in the Department of Work and Pensions 'Disability Confident Employer' scheme. All applicants who declare they have a disability and who meet the minimum requirements of the job as set out in the person specification will therefore be guaranteed an interview. Applicants are required to complete the relevant section of the application form to access this initiative.

- 6.11. Those involved in the recruitment and selection process should undertake appropriate recruitment and selection training to develop awareness of stereotypical thinking and unconscious bias which can negatively impact practice and lead to discrimination. As a minimum, the Chair of the panel must have completed this training.
- 6.12. If adjustments to the workplace are required to enable a person with a disability to take up employment (after the decision has been taken to appoint the candidate) these should be discussed and implemented timeously and certainly prior to the individual's commencement date. If necessary, where there is uncertainty regarding a particular medical condition or there are safety implications, the preferred candidate and manager will liaise with and take advice from specialist advisers, including Occupational Health. As a result, the application of reasonable adjustments should enable the new employee to fulfil the duties of the post as quickly as possible.

Induction

- 6.13. It is particularly crucial that employees with a disability have their individual needs understood and met where possible, so they feel welcomed into the workforce.
- 6.14 In preparation for a disabled employee's start date, the manager will be responsible for consulting with them to ensure any planned reasonable adjustments enable them to work safely and effectively and have equal access to the benefits of employment. Consideration should be given to the need for any awareness raising, training and/or communication with the wider staff group to enable appropriate support in the workplace for a disabled employee

Neurodivergence

- 6.14 Neurodivergence refers to individuals who have a cognitive variation that is considered different from what is typical.
- 6.15 The support needs of these employees are often less obvious than that required for other forms of disability. Types of workplace considerations that would support these employees include:
- developing sensory friendly spaces through the provision of noise-cancelling headphones, a quiet space or appropriate desk placement.
 - Varying lines of communication - autistic people can struggle to use the phone, whilst those with ADHD can struggle to respond to written correspondence – be flexible in communication with colleagues should be encouraged.

- Providing clear written instructions - neurodivergent people often struggle with verbal processing and can forget verbal instructions easily.

Training and Career Development

6.16. NHS Lothian is committed to ensuring that the access to and delivery of training is inclusive of all employees. NHS Lothian's commitments to making education and training accessible are outlined in part within our Inclusive Learning Framework. Inclusive education is an approach which recognises and values diversity so that the diverse learning needs and preferences of individual learners are identified and met. Inclusive education is an anticipatory approach which takes proactive steps to identifying and meeting the needs of learners and anticipates those needs where possible. It also involves facilitating the provision of and access to identified learning support so that all learners have the opportunity to maximise their learning outcomes.

Disability Arising during Employment

- 6.17. An employee may find themselves in the situation where they develop a disability after starting their role within NHS Lothian. This may mean that they can experience difficulties in performing the normal duties of the post. It is important that supportive and empathetic consideration is given to any reasonable adjustments to the job, working practices and conditions to help the individual to remain within their substantive role
- 6.18. Where an employee becomes disabled, NHS Lothian will make every effort to ensure that the employee remains in their own job before considering alternatives such as redeployment.
- 6.19. If appropriate the manager will arrange for the member of staff's capabilities to be assessed in conjunction with the Access to Work in order that consideration can be given to arranging suitable alternative employment within NHS Lothian.

Implementing Reasonable Adjustments

6.20. Where an employee recognises the need for a reasonable adjustment to working arrangements or to a feature of the premises, they should discuss this requirement with their manager. Alternatively, Occupational Health may advise on the need for adjustments as part of a referral process. Depending on the nature of the adjustment the manager may be able to put this in place without further guidance and delay.

- 6.21. Where this is not possible, the manager, should seek advice from a variety of sources including eHealth for technological solutions, Occupational Health and ER.
- 6.22. The prime responsibility for considering a request and arranging appropriate adjustments, where these are deemed to be reasonable, will lie with the manager. There are also responsibilities for the disabled employee under the Equality Act (2010). This includes the need to co-operate with the reasonable adjustments proposed.
- 6.23. In some cases, the reasonable adjustment may impact on colleagues' roles. In order to be as supportive as possible to the consideration of the adjustment the application cannot be considered in isolation. In practical terms, in order to take a person-centred approach for all involved, the "reasonable adjustment" discussion should include everyone affected with the agreement of the employee.
- 6.24. Where the manager does not have relevant knowledge or experience in this area they should seek advice from HR Enquiries. Additional advice may be sought from the Disabled Employees Network (DEN) as appropriate. An outside specialist may be consulted with the agreement of the employee.
- 6.25. The manager responsible for arranging the reasonable adjustment will keep the employee informed of progress and any decisions being taken in respect of their situation. It is important that managers deal with such requests as timeously as possible. For a simple request for reasonable adjustments, a response should be provided within 20 working days from receipt of the request. For a more complex request it would be expected that an initial response would be provided within 20 working days with a final response within 30 working days. If this is not achievable the manager should formally update the employee to keep them informed of what is happening with their request and the reasons for the delay. It is important to consider the impact on the health and wellbeing of the member of staff involved if a decision cannot be arrived at within a reasonable timescale or where updates are not provided on a regular basis.
- 6.26. Agreement of the employee concerned should be sought at all stages where appropriate. It is crucial that the expertise of the individual concerning their own disability is recognised in terms of informing any discussions and agreed actions in respect of their request.
- 6.27. Examples of reasonable adjustments can include:
- Reducing hours of work to part time
 - Job sharing
 - Phased return to work
 - Allocation of duties to one or more other colleagues
 - Additional training or re-training
 - Time off for rehabilitation or treatment

- Flexible working options (e.g. home working)
 - Acquiring/modifying equipment
 - Specialist software packages
 - Increasing supervision
- 6.28. If the change involves a reduction in hours or the redefined role results in a change of band this will be dealt with in the following way:
- For a permanent change the salary received will be based upon this revised banding.
 - For a temporary change the salary received will be based upon the revised banding for the period in question. On return to the previous role where fully undertaking the duties, the former rate of pay and banding will be re-instated.
- 6.29. It is crucial that any reasonable adjustments implemented are reviewed regularly to ensure that these are operating effectively and are still providing the support that is needed by the employee. The review period should be discussed and agreed with the individual.
- 6.30. If the required reasonable adjustments are not possible in the substantive post, or Occupational Health have recommended a change of role, consideration should be given to the identification of a suitable alternative post under the NHS Lothian Redeployment Policy. Reasonable adjustments may be required to posts obtained through redeployment.
- 6.31. Employees covered by the Equality Act 2010 will be given preference where a number of candidates meet the skills' requirements for a post. If the employee is disabled for the purposes of the Equality Act 2010 consideration may require to be given to vacant posts at a higher pay band/grade in exceptional circumstances.
- 6.32. If the above options have been thoroughly exhausted, termination of contract may be the only remaining option. This must be managed in line with the NHS Scotland Workforce Attendance Policy taking appropriate advice and guidance from Employee Relations.

Sickness Absence

- 6.33. It is important to distinguish between general sickness absence and disability-related sickness absence, when managing absence. This helps to understand if absence is related to impairments and/or medical conditions, which may, at particular times, generate a greater level of sickness absence.
- 6.34. When undertaking return to work interviews with employees, the manager should try to ascertain if the absence was related to a disability. In such cases it may be appropriate to seek advice from Occupational Health.

- 6.35. It is important that all absences are recorded appropriately on SSTS to accurately reflect the reason for absence. This will ensure that absences and appointments related to a disability can be identified. If, as a result of a disability, an employee has frequent short and/or long- term absence from work, the employee's manager may require advice from Occupational Health, regarding additional support or reasonable adjustments that can be utilised.

7. Disclosure and Monitoring

- 7.1. In order to monitor NHS Lothian's performance in achieving the aims set out in this policy NHS Lothian will request and retain data on the disability status of its workforce. This data is processed and retained in line with the Data Protection Act 1998. The disclosure by applicants and staff of their disability status is voluntary but this data is invaluable to NHS Lothian as it enables accurate review of progress and highlights any areas where NHS Lothian is not succeeding in promoting equality. The data is anonymised prior to analysis, review and reporting. It plays no part in making decisions about individual employees. Its function is to make decisions about the organisation's performance.
- 7.2 NHS Lothian will report on its performance in relation to disability equality as part of the Annual Equality and Diversity Monitoring Report and more frequently as required.

8. Review

- 8.1. This guidance will be reviewed every two years through the Lothian Partnership Forum with input from the Disabled Employee Network.