

Neurodiversity in the workplace

First edition (2018)

GMB

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**THINKING
DIFFERENTLY
AT WORK**

Toolkit

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FOREWORD

As a trade union, we support members through some of the most challenging times in their working lives. We support, represent, organise and provide guidance where and when our members need it. For members with neurodivergent conditions such as dyspraxia, dyslexia, ADHD or autism spectrum conditions, there are daily challenges that GMB can and will help to overcome.

From interview processes, to progression and development, or simply fighting to get the reasonable adjustments they need, it's no surprise that 7 in 10 neurodivergent workers report that they have faced discrimination in the workplace.

During my 40 years supporting GMB members, I've witnessed first-hand the impact discrimination has had on neurodivergent members, including a loss of workers' confidence and sadly, sometimes their livelihoods too.

Often, this has been due to a lack of understanding in the workplace, of how to best provide appropriate tailored support for neurodivergent workers' needs. This benefits no one and is entirely avoidable. Our members tell us that often even small changes in working practises can make huge differences – yet only 10% of workplaces have a specific policy on neurodiversity inclusion and support.

GMB believes that all workers should have the right to achieve their full potential, to develop careers and to access training, no matter their background. We all deserve the opportunity to succeed and be valued at work.

I'm extremely proud of the work GMB neurodivergent activists and staff have done to develop and produce this toolkit. I am excited to see how we can continue our strong history of championing equalities and supporting members wherever their place of work is.

GMB encourages all employers to think about staff who think differently within their organisations, at every stage from recruiting to supporting and progressing staff. I encourage employers to embrace the strengths of a neurodiverse workforce.

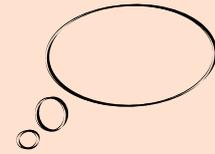
We should all recognise that, with supportive policies and practices, all workplaces can foster and develop the diversity of talent, skills and experience that will benefit not just workers but businesses, services and our society as a whole.

Tim Roache

General Secretary, GMB Union

October 2018

BACKGROUND TO THINKING DIFFERENTLY AT WORK



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A motion passed by GMB Congress 2018 called for the union to: (a) lead a national awareness campaign around hidden disabilities; and (b) provide practical support, advice, and materials regarding neurodiversity in the workplace.

GMB has established the Thinking Differently at Work campaign as a consequence of that motion.

This toolkit has been produced by neurodivergent members of GMB staff in consultation with neurodivergent GMB members.

Other Thinking Differently at Work documents are available. At the time of writing, these include a guide to neurodiversity and the law at work, and also a guide to dyspraxia in the workplace. It is GMB's intention to add further guides as the campaign develops.

All hyperlinks are correct at the time of writing in September 2018.

The scope of this document

The aim of this document is to provide information and advice that can be used to help make workplaces more inclusive for neurodivergent workers.

For reasons of length, it does not contain a detailed introduction to individual neurodivergent conditions. Separate guidance notes are being produced (although the difficulties of generalising about neurodiversity should be stressed at all points).

The list of neurodivergent conditions in this toolkit is not exhaustive, and this list may be expanded in any future editions.

Accessibility

This document has been designed to be accessible for a neurodiverse audience.

If you require a Thinking Differently at Work document in a different format then please contact us at info@gmb.org.uk and every reasonable effort will be made to accommodate your request.

Key concepts

Neurodiversity

Neurodiversity is the idea that cognitive conditions, such as autism, ADHD, dyslexia and dyspraxia, are natural variations in the way people think and process information.

The term recognises both the difficulties that people who have these conditions may encounter in the workplace and also the unique strengths that can derive from thinking differently.

Neurodivergence

Workers may be described as neurodivergent if they have cognitive profile that is different to that of the average or typical person. For example, a dyslexic person may be said to be neurodivergent.

Neurotypical

The term neurotypical is sometimes used to describe people who are not neurodivergent.

Disability

The term 'disability' is used in this toolkit in accordance with its legal definition, as set out in the Equality Act 2010 and case law. While not all neurodivergent workers will consider themselves to be disabled, neurodivergent conditions are likely to meet the legal definition of disability (although each claim is interpreted on a case-by-case basis by Employment Tribunals).

The social model of disability

The social model of disability says that neurodivergent people are disabled because society and workplaces are organised for the benefit of neurotypical people.

Under this model, employers should change their environments, policies and cultures to remove barriers faced by neurodivergent workers.

Coping strategies

Many neurodivergent workers will have developed coping strategies that can outwardly 'mask' the effects of the condition (or conditions). This may be on the basis of formal advice, or such strategies may have been developed by the individual.

The existence of coping strategies is not a reason to deny a person support (including for obtaining a diagnostic assessment.) Coping strategies can in some cases involve making undue sacrifices on the worker's part (such as working very long hours to catch-up). Successful coping strategies can also lose their effectiveness if an individual's circumstances change.

Nothing about us without us

This slogan encapsulates the idea that policies that affect disabled people should be drawn up with the full and direct participation of disabled people. Its use has been increasingly adopted in recent years by disability activists, and its use is endorsed by the GMB.

WHAT IS NEURODIVERSITY – AND WHY DOES IT MATTER?

Neurodiversity is the idea that there are natural variations in the way that people think and process information.

Today, those neurological differences are given labels such as autism spectrum conditions, ADHD, dyslexia, and dyspraxia.

At least one in ten working-age adults are neurodivergent in some way.

Neurodiversity has always been with us. Workers who think differently often have pronounced strengths that can bring real value to their workplace.

Unfortunately, most workplaces and working practices are not designed to be inclusive of these natural variations. Intended or otherwise, this form of exclusion can create barriers, which in turn can lead to discrimination, pressure, and underperformance.

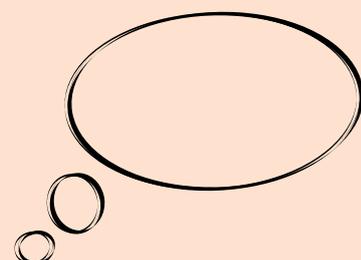
The need to create inclusive workplaces is an issue of growing importance. We know this from listening to GMB members. ACAS says that its helpline has received an increase in the number of calls relating to neurodiversity in recent years.¹

Employers too are increasingly recognising that the world of work needs to change.

‘Neurodiversity is, ultimately, a biological fact of the infinite variety of human neurocognition.

‘Now, the same term ‘neurodiversity’ is also being used to represent a fast-growing sub-category of organisational diversity and inclusion that seeks to embrace and maximise the talents of people who think differently.’

Chartered Institute for Personnel and Development²



As with all workplace issues, no worker should have to shoulder burdens alone. The most effective response will always be on a collective level.

This toolkit and its associated materials are intended to both improve the representation of individual workers and raise the profile of neurodiversity in the bargaining agenda.

‘Besides the more accepted advantages of people who think and look at the world differently, there are benefits to us being more tolerant of disabilities and differences which might be invisible or ambiguous. For example, managers being more explicit about tasks, direction, challenging judgements and prejudice, and generally being more open-minded.’ - Employer.’

Employer³

A BRIEF INTRODUCTION TO DIAGNOSTIC LABELS

This section provides a brief introduction to some of the conditions that are commonly described as being part of neurodiversity.

The list is not exhaustive and it may be expanded in future editions of this document.

It should always be remembered a label does not define a person. There is a high degree of variation between people who share the same diagnostic label.

Many people will have two, or more than two, diagnoses of neurodivergent conditions. This 'overlap' contributes to the diversity of the workforce. No two people are the same.

As discussed elsewhere in this document, neither the union nor employers should ever make assumptions about someone's experiences, requirements or capabilities based on a label.

When someone requires support, the best starting points are listening to them and, where appropriate, consulting any relevant expert assessments of that person's requirements.

ADHD

Attention Deficit and Hyperactivity Disorder (previously referred to as Attention Deficit Disorder or ADD).

People with ADHD may experience problems with focus or be distracted from some tasks. On the other hand, people with ADHD may demonstrate a very high degree of focus on other tasks. This is sometimes called 'hyperfocus.'

People with ADHD may require different stimulation levels to a typical worker. Some workers with ADHD excel in work environments with high levels of stimulus.

Autism

Diagnoses that fall under the umbrella of Autism Spectrum Conditions (ASC) include Asperger's Syndrome and Pervasive Developmental Disorder Not Otherwise Specified (PDD – NOS).

Many autistic people can appear highly articulate and are able to work productively in many roles and sectors, but may struggle to understand the complexities of social interaction. Sensory inputs such as noise, heat, light and touch can be an issue for many people on the autism spectrum.

Dyslexia

Dyslexia is often characterised by problems with reading and writing, although a dyslexic person may encounter other challenges connected to cognitive tasks, such as sequencing, processing of information, working memory, and phonological processing.

The NHS states that 'people with dyslexia often have good skills in other areas, such as creative thinking and problem solving.'⁴

Dyspraxia

Also known as Developmental Co-ordination Disorder ('DCD').

Dyspraxic people may encounter problems with fine and/or gross motor activities. This can present challenges for activities that involve handwriting and some manual tasks.

Other common characteristics include atypical responses to sensory inputs, and problems with organisation and working memory.

The Dyspraxia Foundation says that 'persistence, determination and extremely hard working are all characteristics associated with dyspraxia.'⁵

Dyscalculia

Dyscalculia is a neurological condition that may affect mathematical functions. Although this condition is sometimes described as being comparable to dyslexia, research is at an earlier stage and someone who is dyscalculic may not also be dyslexic.

Dysgraphia

Dysgraphia involves neurological difficulties with the act of handwriting and potentially other fine motor skills, such as spelling and finger sequencing (which may affect typing).

NEURODIVERSITY AND THE SOCIAL MODEL OF DISABILITY

Not all neurodivergent workers will think of themselves as being disabled. They are entitled to identify with the term, or not, as they see fit.

It is however important that employers are asked whether they subscribe to the social model of disability.

The social model of disability

The social model of disability holds that people are disabled by inappropriate practices, attitudes, and environments. This view is supported by GMB.

According to the social model, barriers to work are problems caused by non-inclusive working practices and environments. Examples may include unnecessary levels of noise or harsh artificial light in a workplace, which may exclude autistic and dyspraxic workers.

This approach to disability focuses on proactively identifying and removing barriers to work and creating an inclusive environment (known as 'inclusion by design').

The social model is a core part of the United Nations Convention on the Rights of Persons with Disabilities, which the UK has ratified. The Convention states that:

'Disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.'⁶

Under EU case law, Employment Tribunals (and other bodies, such as employers) are also obliged to have regard to the social model of disability (Ring v Dansk almennyttigt Boligselskab C-335/11 and C-337/11, 2013).⁷

Further information is available in GMB's guide to neurodiversity and the law at work, which can be accessed at:

<https://www.gmb.org.uk/neurodiversity-law-toolkit.html>

The medical model of disability

Under the medical model of disability, neurodivergence is an impairment that should be treated to make people more 'normal.' In other words, under the medical model, the individual must change – not society.

The medical model looks at what is 'wrong' with a person because they are different compared to the majority of their co-workers or the wider population.

If it is said that a worker 'suffers from dyslexia,' or 'has to overcome ADHD,' then it is likely that such language derives from a medical understanding of neurodiversity.

The GMB view

GMB supports the social model of disability.

It is likely that employers that have regard solely to the medical model, and as a consequence only make one-off, reactive adjustments for individual neurodivergent workers, will continue to be exclusionary in other ways.

The social model puts the responsibility for change on the employer. Many workers will be reluctant to disclose a neurodivergence, and if they have to 'opt-in' to experience an inclusive environment then it is less likely that others will come forward.

Which model of disability does your employer use?

Management and HR departments may not have a clear view on social versus medical models of disabilities. They might not be familiar with the concept of the social model.

Starting a conversation about the social model of disability can help to challenge preconceived ideas and encourage management to think again about its policies. A discussion about the social model can also be a useful way of broaching specific concerns about the workplace that have been raised by individual members.

MYTHBUSTERS – MOVING BEYOND STEREOTYPES

Many people feel that they have a certain level of understanding of neurodiversity. Unfortunately, these views are often based on outdated beliefs or stereotypes.

When management relies on stereotypes, this can be profoundly damaging for individual workers. It can also represent unlawful conduct by the employer. The EHRC's statutory Code of Practice states that, in the context of recruitment processes:

'Basing ... decisions on stereotypical assumptions or prejudice is likely to amount to direct discrimination.'⁸

Every person has their own strengths and weaknesses, and two workers will often 'wear' the same diagnostic label differently. Workers will often have overlapping diagnoses, which can affect individuals in unique ways.

As the saying goes, if you have met one dyslexic person, then you've met ... one dyslexic person. The same principle applies to all neurodivergent workers.

Did you know?

The blockbuster film *Rain Man* was based on a man, Kim Peek, who was not autistic. The author of the bestselling *Curious Incident of the Dog in the Nighttime* book has said that he did not research autism or have a personal connection to the condition.⁹

Popular culture rarely offers an accurate reflection of how real people think and behave. Employers need to see beyond stereotypes and focus on the strengths and requirements of individual workers.

Unfortunately, a number of myths have arisen around neurodiversity. GMB has prepared a short 'mythbuster' in response. The aim is not to provide a response to every example of misinformation. Rather, it is designed to show how popular beliefs about neurodiversity are often based on incorrect assumptions.

MYTHBUSTERS

We are an inclusive employer because we provide colour overlays for dyslexic employees

Coloured overlays can be helpful for some dyslexic people – but they are not useful for everyone!

Some dyslexic people prefer to have documents printed on thick blue or cream paper, or to have two screens if regularly use a computer, but there is no ‘one size fits all’ approach.

The same is true for all neurodivergent people. You have to listen to the individual and respond to their specific requirements.

You can't be dyspraxic because you successfully complete manual tasks

There are endless variations to this objection, such as: a worker can't be dyslexic because you can spell, or they can't have ADHD because they don't come across as being hyperactive.

These views are often based on stereotypes, and they ignore the fact that neurodivergent workers often develop coping strategies that can ‘mask’ their condition(s) the majority of the time.

As discussed above, employers that dismiss or ignore a disclosure on the basis of prejudice or stereotypes are likely to be acting unlawfully.

Neurodivergent conditions are mental health conditions

Neurodivergent people may also have mental health concerns, just like anyone else, but conditions such as dyslexia, ADHD and autism are not mental health problems.

Neurodivergent people can be at a higher risk of developing mental health conditions. This can be due to factors including the stress of unadjusted working environments and bullying at work. These are issues that can be addressed – to at least some extent – by collective action in the workplace.

This issue is explored in more detail later in this document.

I don't believe that ADHD or dyslexia are real conditions...

Neurological differences can be objectively observed. Studies using MRI scanners have shown that the brains of people with conditions include autism, dyslexia, ADHD, and dyspraxia are structured in ways that can be measured and studied.

The human brain is the most complex structure in the known universe. Consequently, even small differences can have a significant impact on the way people think. Neurodiversity is a biological fact and employers do not have the right to pick and choose which conditions they recognise.

Certain conditions are rare in women

It is a persistent myth that some conditions (such as dyspraxia or autism) do not occur or are exceptionally rare in women and girls. In fact, many thousands of females are diagnosed or assessed as having these conditions every year.

There is an ongoing debate about whether women and girls are less likely to have certain conditions, or whether they are less likely to be diagnosed. An answer cannot currently be asserted with confidence, and gender should never be used as a basis for dismissing a request for adjustments or diagnostic support.

KEY MESSAGES FOR GMB MEMBERS AND EMPLOYERS

Key messages for members

- GMB is committed to the principle of equality through inclusion. We are determined to represent all our members – including those who think differently at work.
- Neurodiversity is a mainstream workplace issue that trade unions are increasingly addressing alongside more traditional aspects of the bargaining agenda.
- Everyone will have friends, colleagues, or family members who are neurodivergent. Inclusion is an issue that we should all care about.
- GMB endorses the principle of ‘nothing about us without us.’ This means that neurodivergent workers should be fully consulted on, and where possible lead discussions related to, changes in policy that affect them at work.

For example, GMB’s Thinking Differently at Work documents have been produced by neurodivergent staff members in consultation with neurodivergent GMB members.

- GMB takes its own obligations towards neurodivergent workers seriously. Branches should take steps to make sure that their own activities and communications are accessible to neurodivergent GMB members.

Key messages for employers

- Neurodiverse employees do not have a 'typical' cognitive profile. This often means that they have unique strengths and valuable skills. In a competitive labour market, getting the best out of their neurodivergent staff can give employers the edge they need.
- Not all neurodivergent people regard themselves as disabled, but the law provides them with exactly the same level of protection against discrimination as people with physical disabilities.
- Awareness of neurodiversity is growing but the majority of employers do not have a neurodiversity policy in place.¹⁰ There are practical advantages to signing one – including aiding compliance with the Equality Act.
- Employers that fail to provide an inclusive environment are leaving themselves liable to claims of discrimination and failure to make reasonable adjustments.
- There is no legal or professional obligation on workers to disclose a neurodivergent condition. Employers must not compel workers to disclose – rather, they should endeavour to create a working environment in which people feel able to disclose without fear of discrimination.
- Public sector employers have a specific duty to have regard to the need to eliminate discrimination against neurodivergent people, and to foster good relationships between people who are and those who are not neurodivergent.

GOOD EMPLOYMENT PRACTICE

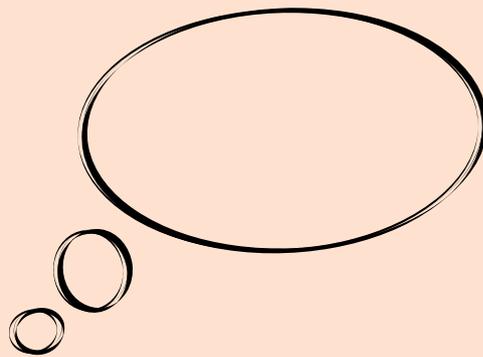
An inclusive workplace is not just a legal and moral obligation – it is also good for business.

There is a strong business case for inclusion. In a tight labour market, employers need to get the best out of their workforce – and the talents that neurodivergent people can bring to the workplace are too valuable to miss.

Employers that fail to remove discriminatory practices are also creating significant liabilities for themselves. There are therefore both important ‘carrot and stick’ motivations for employers to adopt more a more inclusive approach.

‘We’re just scratching the surface of understanding how neurodiversity at work can help organisations be more creative and innovative, but the insights we already do have show the unique value that neurodivergent individuals can bring to the workforce.’

Dr Jill Miller, Diversity and Inclusion Adviser at the CIPD¹¹



Examples of good employment practice

GCHQ

‘We recognise that valuing diversity is not just a moral obligation. It is business critical ... without neurodiversity we wouldn’t be GCHQ, and the skills this can bring to help us to achieve success at what we do.’¹²

GCHQ – the UK’s signals intelligence agency – has a well-established neurodiversity programme.

The agency says that it puts ‘in place support systems that allow such staff to perform at their best and aim to do this without the need for formal diagnosis or the ‘labelling’ of employees.’

For more information about the ‘GCHQ model,’ please see Chapter 7 of the EHRC’s Working Better report:

https://www.equalityhumanrights.com/sites/default/files/working_better.pdf

BT

‘The initiative represents the changing nature of engineering within BT. Years ago, jobs in this field were essentially manual. Now, they involved receiving and making complex notes on a variety of technology, which can highlight traits of Dyslexia in some people that have never previously been diagnosed.’

BT established its Dyslexia in Engineering programme for Openreach and Operate staff in 2012, following workers’ requests for information about the condition.

Engineers initially answered a short screening questionnaire online. Those who reported potentially dyslexic traits were then contacted by an outside agency (Remploy) who conducted more thorough assessments and identified reasonable adjustments.

The pilot scheme was so successful that Dyslexia in Engineering is now offered as a permanent support route.

Creating an inclusive workplace

It is difficult to be prescriptive about what an inclusive workplace should look like. Every employer will have slightly different operational requirements.

There are, however, common issues to consider. Assessing and acting on these issues will help employers to comply with their duty to prevent discrimination in their workplace.

Frequently occurring issues, which should also be considered when planning union activities, include:

- **Awareness** – Employers are liable for the actions of all their employees, unless they have taken ‘all reasonable steps’ to prevent discrimination (this is known as ‘vicarious liability’). These steps should include equality training that covers neurodiversity.
- **Noise and lighting levels** – many neurodivergent workers have elevated (or reduced) levels of sensory sensitivity, relative to the average for all workers. This means that brightly light or noisy production lines, or open plan offices, can be a source of distraction and anxiety if adjustments are not made.
- **Equipment and communication** – as weaknesses in short-term auditory memory can be a common feature of neurodivergent conditions, workers may benefit from clear and unambiguous instructions. Employers should also make available assistive technology, such as speech-to-text software or time management applications.
- **Language** – pejorative terms should not be used in relation to neurodiversity in the workplace (and such conduct is likely to constitute harassment). It is inadvisable to say that someone ‘suffers from’ a neurodivergent condition. Employers should also avoid the use of the term ‘learning difficulties’: this phrase is more commonly associated with children, and many neurodivergent workers do not struggle to acquire new skills or understand new concepts.

The UK Government has produced official advice on avoiding inappropriate language regarding disability at work: <https://www.gov.uk/government/publications/inclusive-communication/inclusive-language-words-to-use-and-avoid-when-writing-about-disability>

There are other steps that are simple best practice. Establishing a quiet room, for example, could be a significant benefit for workers who are hypersensitive to sound. This is also best practice for religious inclusion.

Establishing a neurodiversity workplace policy

Despite growing awareness of the issue, only 10% of employers are known to address neurodiversity in their corporate policies, either through their equality and diversity policy or through a stand-alone neurodiversity policy.¹³

There are clear advantages to putting in place a neurodiversity policy. It provides a well-understood framework for both management and workers to follow when discussing such issues as capability proceedings and disclosures of neurodivergent conditions. It also helps employers to show that they have taken 'reasonable steps' to prevent discrimination, harassment and victimisation.

As part of this toolkit, GMB has produced a model neurodiversity employer's policy, along with an introductory letter to management.

CIPD advice on inclusive practice around neurodiversity

Recruitment:

- Ensure job descriptions are jargon free and clearly signal that your organisation welcomes neurodivergent individuals
- Many recruitment practices often rely on competency frameworks where people are filtered out if they don't meet minimum standards on a set of wide ranging capabilities – review your recruitment approach to ensure you're not screening out talented individuals
- Ensure interviewers are informed about neurodiversity so they are fair and empathetic in the interview process (such as by choosing a quiet interview space, avoiding rapid fire questions and understanding why some people might not make direct eye contact)

Workplaces:

- Avoid really bright lights in your office that can be distracting or lead to sensory overload
- Consider how noisy open plan environments can be distracting or lead to individuals feeling overwhelmed
- Complete a desk assessment for any new joiners, helping them make sure their computer screen isn't too bright and they have everything they need to aid personal organisation (such as trays and filing drawers)

Management:

Train line managers so that they feel confident and able to assist neurodiverse employees at work and help them make the most of their skills

- Encourage regular one-to-ones and feedback between line managers and their reports to keep communication channels open and help motivate and support all employees
- Make sure neurodiversity is welcomed and championed by senior leaders and that a culture of celebrating difference is encouraged throughout the organisation

HR:

- Highlight employee support networks and similar resources clearly in the on-boarding process and on the company intranet for anyone who needs them
- Ensure individualised support is available to all, from access to mentoring, coaching and counselling – make sure that support is clearly signposted
- Address comfort at work on a regular basis through workspace preference questionnaires and broader employee satisfaction surveys

Source: Chartered Institute for Personnel and Development, February 2018

<https://www.cipd.co.uk/about/media/press/150218-neurodiversity>

NEURODIVERSITY AND THE LAW

Disclaimer

Disability law can be complex, especially with regard to disability discrimination.

For reasons of space, it is not possible to provide a comprehensive introduction to equality law in this guide.

For more detailed information, please see the GMB's guide to neurodiversity and the law at work: <https://www.gmb.org.uk/neurodiversity-law-toolkit.html>

Introduction

Not all neurodivergent workers think of themselves as being disabled. It is likely, however, that they will satisfy the legal definition of disability (although Tribunals will interpret each claim on a case-by-case basis).

Meeting the legal definition affords neurodivergent workers important rights and protections at work. These include:

- The right to reasonable adjustments
- The right to not be discriminated against, victimised, or harassed because of their disability

If these rights are infringed then a claim can be made to an Employment Tribunal.

These entitlements are set out in the Equality Act 2010. There are also additional duties on public sector employers.

Note on Northern Ireland

The Equality Act applies in England, Wales, and Scotland. Although the substance of equalities law is the same in Northern Ireland, the large number of small textual differences means that separate guidance should be consulted on the application of equality legislation in Northern Ireland.

Definition of disability

Under Section 6 of the Equality Act 2010, a disability is defined as a **'physical or mental impairment'** that **'has a substantial and long-term adverse effect'** on a person's **'ability to carry out normal day-to-day activities.'**

Two useful points to remember are that:

- As neurodivergent conditions are lifelong in their nature, most neurodivergent workers will automatically meet the threshold for 'long-term'
- 'Substantial' means something that is more than minor or trivial

As discussed earlier, the UN Convention on the Rights of Persons with Disabilities and EU case law also recognise that disability can be caused by workplace or societal barriers.

Recognition for neurodivergent conditions as disabilities

There are numerous precedents for the recognition of neurodivergent conditions as disabilities by Employment Tribunals.

A list of useful Tribunal precedents can be found in GMB's guide to neurodiversity and the law at work.

The Government's statutory guidance also explicitly states that:

'A disability can arise from a wide range of impairments which can be ... developmental, such as autistic spectrum disorders (ASD), dyslexia and dyspraxia.'¹⁴

REASONABLE ADJUSTMENTS

Under Section 20 of the Equality Act, employers have a duty to make 'reasonable adjustments' to make sure disabled people are not 'substantially disadvantaged' compared to those who are not disabled.

This duty applies to both workers and job applicants.

An adjustment can be made to three broad areas:

1. An employer's **provision, criterion or practice** – this covers a broad range of workplace policies (ie. this could mean a requirement to sit certain written tests)
2. A **physical feature** – this could cover physical features that cause inappropriate noise, heat, or lighting levels
3. The provision of an **auxiliary aid** – this could mean speech-to-text software, or ergonomic keyboards, or other assistive technology.

An adjustment under principles 1 and 3 can take the form of providing accessible information. This could mean, for example, producing documents in large type on thick coloured paper, if such adjustments were helpful for a dyslexic worker.

There is no comprehensive list of potential reasonable adjustments for neurodivergent workers, and more information on possible adjustments is provided in GMB's separate guide to neurodiversity at work.

Some examples of potential reasonable adjustments for neurodivergent workers include:

- Structuring breaks into long meetings for a worker with ADHD
- Providing a second computer screen for a dyslexic worker
- Agreeing a later start and finish time for an autistic worker to avoid the rush hour
- Varying a dress code for a dyspraxic worker

As can be seen above, most reasonable adjustments are inexpensive. Many do not incur any costs at all.

Identifying reasonable adjustments

It is not always necessary to carry out a workplace needs assessment to identify suitable reasonable adjustments.

A neurodivergent worker may already have a clear understanding of their requirements. Reasonable adjustments may have been successfully put in place in a previous role (either externally or internally).

Adopting a reasonable adjustments passport policy will help to put such arrangements onto a formal footing.

If an assessment of workplace needs is required, it should be carried out by an appropriately qualified and experienced person (the meaning of an appropriately qualified and experienced person may vary depending on the condition that is being assessed).

An assessment of workplace needs can be conducted by an Occupational Therapist or procured from an external agency. At the time of writing, a workplace needs assessment by the British Dyslexia Association costs £375 + VAT. A publicly-funded assessment may be available through the Access to Work scheme (please see the separate section on Access to Work below for further details).

Exception to employers' duty to make reasonable adjustments

There is no duty to make reasonable adjustments if the employer did not know, or could not have been reasonably expected to know, that a person was disabled within the meaning of the Equality Act. The implications of this exception are explored in more detail in GMB's guide to neurodiversity and the law at work.

Further information

Further information regarding reasonable adjustments can be found in GMB's guide to neurodiversity and the law at work:

<https://www.gmb.org.uk/neurodiversity-law-toolkit.html>

DISABILITY DISCRIMINATION

Unfortunately, disability discrimination (including against people who are neurodivergent) remains an all too common an occurrence in the workplace.

Seven out of ten neurodivergent workers say that they have experienced discrimination at work, and 73% say that they do not disclose their condition because of a fear of discrimination.¹⁵

This means that when trade union activists who are not neurodivergent encounter the issue, it is often in the context of workplace discrimination and capability proceedings.

This chapter is not intended to offer an exhaustive introduction to a complex area of law. Unless it is a personal area of specialism, reps who encounter disability discrimination should seek legal advice. This chapter instead offers a brief introduction to some of the key concepts around disability discrimination law.

Further information on disability discrimination law, including detailed practical examples, can be found in GMB's guide to neurodiversity and the law at work: <https://www.gmb.org.uk/neurodiversity-law-toolkit.html>

Types of disability discrimination

The Equality Act establishes fixed categories of unlawful conduct that relate to disability discrimination: failure to make reasonable adjustments (discussed above), direct discrimination, indirect discrimination, discrimination arising from a disability, harassment and victimisation.

Each can occur in relation to neurodiversity.

Important points to remember are that:

- In most cases, it will be necessary to prove that the employer knew, or should have known, about a person's disability for a claim to succeed; and
- Claims of direct and indirect discrimination require a 'comparator' exercise to be undertaken to prove that a worker was treated less favourably than non-disabled workers.

- In most cases, where discrimination is proved, an employer's only legitimate defence is that discriminatory treatment was a proportionate means of achieving a legitimate aim.

For further information, including on the meaning of these terms, please consult GMB's guide to neurodiversity and the law at work.

Direct discrimination

A disabled worker is directly discriminated against if, because of their disability, the employer treats them less favourably than they would treat others.

If negative treatment is experienced only by neurodivergent workers, this is likely to amount to direct discrimination.

Example: All workers in a team perform a similar role. A worker with ADHD is the only member who is singled out for capability proceedings after disappointing results are reported. The employer cannot objectively justify this treatment. This is likely to amount to direct discrimination.

Indirect discrimination

Indirect discrimination occurs when an apparently neutral policy, criterion or practice puts a neurodivergent worker at a particular disadvantage.

The scope of this category of unlawful conduct is potentially very wide. In practice, a number of requirements must be satisfied if a claim is to be made. For example, in a case of indirect discrimination against a worker with dyscalculia, it must be demonstrated a policy is discriminatory against both dyscalculic workers as a group and also against the individual bringing the claim in particular.

Example: An employer requires all employees to pass a test. The form is presented in small print and it must be completed by hand. This is likely to amount to indirect discrimination against dyslexic and dyspraxic workers.

Discrimination arising from a disability

This is a separate category of unlawful conduct to direct and indirect discrimination. There are subtle but important differences between the categories.

This type of discrimination arises if an employer treats a neurodivergent worker unfavourably because of something arising as a consequence of that worker's disability.

Example: A worker is dismissed for sickness absence caused by depression and anxiety. The depression and anxiety was linked to their autism spectrum condition. In this case, the mental health problems that triggered the sickness absence was something arising from a disability. The employer may be found to have unfairly dismissed the worker because of discrimination arising from a disability.

Harassment

Harassment means unwanted conduct, that is connected to a relevant protected characteristic (which includes disability), and which has the effect of:

- (a). Violating a worker's dignity, or
- (b). Creating an intimidating, hostile, degrading, humiliating or offensive environment for that worker, and
- (c). It was reasonable for the unwanted conduct to have that effect, taking into account the circumstances of the case.

The potential meaning of 'unwanted conduct' is very broad. It can refer to both one-off incidents and pattern of behaviour.

Example: A manager incorrectly assumes, based on flawed stereotypes, that a neurodivergent worker is unable to complete certain tasks. They repeat this opinion to other workers and make patronising and derogatory comments regarding the neurodivergent worker's perceived capabilities. This behaviour is likely to constitute harassment.

Victimisation

Victimisation occurs when a worker is subjected to a 'detriment' because they have performed a 'protected act.'

Examples of a 'detriment' include the denial of promotion or opportunities to train, or being subjected to disciplinary or capability proceedings.

'Protected acts' include (but are not limited to): bringing proceedings under the Equality Act, giving evidence or information in connection with proceedings under the Equality Act, and making an allegation that the employer has contravened the Equality Act.

Example: A dyslexic worker initiates early conciliation with ACAS on the grounds that their employer has not made reasonable adjustments. After the issue is resolved, the employer changes that worker's place of work – forcing them to undertake a longer commute. When they complain, a manager replies 'well, you caused us enough trouble.' This is likely to constitute victimisation.

EQUALITY ACT RIGHTS OF REPS, AND PARENTS AND CARERS

A neurotypical worker can be unlawfully discriminated against because of their association with a neurodivergent person (McLeod v Royal Bank of Scotland PLC, 2016). Examples of such associations include parents and carers of neurodivergent people.

A union rep can be unlawfully discriminated against if they are singled out for negative treatment because they have assisted a member who is neurodivergent.

To give an example, a rep helps an autistic worker to bring a discrimination claim. They are later denied a promotion, and their manager's interview notes state: '*concerns about loyalty to the company (tribunal)*'. The rep has therefore been victimised because of their activities on behalf of someone who has a protected characteristic.

Employers do not have a duty to make reasonable adjustments because of a worker's association with someone who is disabled (Hainsworth v Ministry of Defence, 2014).

PROTECTIONS FOR INTERNAL AND EXTERNAL JOB APPLICANTS

The protections provided by the Act apply to job applicants and internal workers who are being considered for advancement.

Many standard recruitment practices may be found to indirectly discriminate against neurodivergent applicants. Examples of potentially discriminatory conduct include: including unnecessary 'all-rounder' requirements in job descriptions, marking interviewees down for not making eye contact, presenting materials in difficult to read formats, or not informing applicants that they will have to complete tests at interview.

The EHRC's statutory Code of Practice provides the following example:

'An employer uses a person specification for an accountant's post that states "employees must be confident in dealing with external clients" when in fact the job in question does not involve liaising directly with external clients. This requirement is unnecessary and could lead to discrimination against disabled people who have difficulty interacting with others, such as some people with autism.'

Employers have a duty to make reasonable adjustments for disabled job applicants.

Further information on the Equality Act and job applications can be found in GMB's guide to neurodiversity and the law at work.

THE PUBLIC SECTOR EQUALITY DUTY

Under Section 149 of the Equality Act, public sector employers 'must have due regard to the need to':

- eliminate discrimination, harassment, and victimisation against disabled people;
- advance equality of opportunity between disabled and non-disabled people; and
- foster good relations between disabled people and non-disabled people.

Section 149(3) also imposes specific duties on public sector employers to remove or minimise disadvantages faced by disabled workers, take steps to meet their needs, and encourage disabled workers to participate in public life or in any other activity in which their participation is disproportionately low.

In practical terms, the public sector equality duty means that:

- (i). There is a duty on public sector employers to proactively remove barriers faced by neurodivergent workers. It is not enough for the employer to simply react as concerns are raised.
- (ii). Public sector employers must prove that it has taken the needs of neurodivergent workers into account when making decisions. For example, if an employer introduces a new policy that negatively and specifically affects neurodivergent workers, then the employer may be acting unlawfully.

The duties outlined in Section 149 can be a powerful tool for changing public sector employer's practices.

Employers' interest in avoiding discriminatory conduct

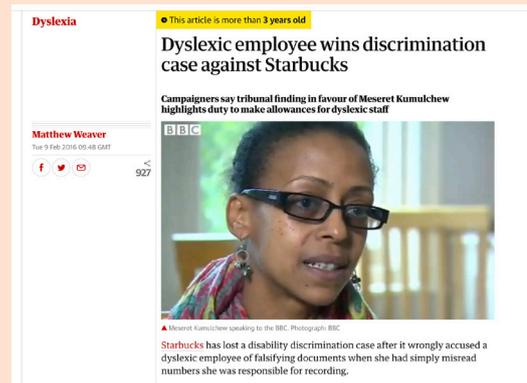
Employers should recognise that discriminatory conduct eventually harms everyone – from the individual worker through to the company as a whole.

Damages for disability discrimination are not capped.

If a claim is upheld at a Tribunal then this can result in significant adverse publicity for an employer.

One example is the reputational damage Starbucks suffered when it was found to have discriminated against a dyslexic worker.

Discrimination cases can have a serious impact on the wellbeing of both workers and managers. It is in the interests of both the union and employers to work together to prevent discrimination from occurring in the first place.



Case study

Lisa worked in a large and busy planning office department as a clerical worker. Lisa had made a disclosure about her dyspraxia and explained she was able to do most office duties, but needed extra time to learn new tasks and find her 'own' way of doing things.

Her line manager, Mavis, prided herself on the efficiency of her section. Lisa had difficulty with sequential thinking so had the alphabet written on card as a reminder, which she taped into the filing cabinet for quick reference. When she took something out of a file, she marked its location with a coloured card. When she had files to put away she pulled a spare chair next to the filing cabinet to put the files on. If the phone went, instead of writing on the standard message form, she typed and then printed the message.

Mavis was not impressed and told Lisa she must learn the alphabet. She insisted the message form was used and was not tolerant of Lisa's handwriting. She continually asked Lisa if they had taught her anything at school.

Lisa became more and more despondent and started taking time off. Her doctor put her on anti-depressants and suggested she talk to a more senior manager and her equal opportunities representative. Both individuals knew Mavis' reputation for efficiency and felt Lisa was to blame and asked her to leave.

Lisa sought legal advice and a formal case was taken to law for unfair dismissal. Lisa won her case and a substantial settlement. Mavis was shocked and had to have time off work for stress. Lisa's self-esteem was so challenged that she could not go back to clerical work.

From the Dyspraxia Foundation's Employer's Guide: Working with Dyspraxia - a Hidden Asset, page 20 https://dyspraxiafoundation.org.uk/wp-content/uploads/2016/06/Employer_guide_to_dyspraxia_1.0.pdf

THE AUTISM ACT 2009

Uniquely, there is a separate statutory regime that imposes certain duties on local authorities and NHS bodies in England in relation to autism.

The duty that may be of most use to adults is the requirement that local authorities and NHS bodies provide a pathway for adult diagnosis of autism.

In respect of employment, paragraph 15.9 of the Government's non-statutory autism strategy says that local authorities should be:

'Setting the example locally and becoming an autism friendly place to work.'

And that:

'The work of the local authority itself in relation to promoting employment effectively addresses the issues and needs of people with autism.'

Current statutory guidelines for local authorities and NHS bodies in England can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/216129/dh_122908.pdf

The Government's current autism strategy, which is expected to be reviewed in 2019, can be found at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/299866/Autism_Strategy.pdf

SEEKING AN ASSESSMENT OR DIAGNOSIS

Many workers will have received a diagnosis during their childhood or adolescence. This will be evidenced by documents such as a Statement of Special Educational Need, an educational psychologist's report, or an Education, Health and Care Plan (EHCP).

Other workers will not have received an assessment or diagnosis. There is no maximum age at which someone can be diagnosed with a neurodivergent condition.

A diagnosis can be an important means of unlocking greater understanding, support and legal protections. There can be, however, potential pitfalls for workers and their representatives to navigate when obtaining and disclosing a diagnosis.

In an ideal world, obtaining and disclosing a diagnosis would be a straightforward and uncontroversial process. In practice, inadequate or expensive diagnostic services, and the potential for discrimination arising from disclosure, means that this is a potentially fraught area.

GMB encourages its reps to use their sensitivity, discretion, and assessment of an employer's commitment to inclusion when advising members over diagnostic support.

Is a formal diagnosis required to secure reasonable adjustments?

It is not always necessary to obtain a formal diagnosis or assessment to obtain support at work. GCHQ, for example, puts support in place for neurodivergent workers without requiring a formal diagnosis.

A truly inclusive employer will proactively offer diagnostic support, if it is required, while also respecting the wishes of the individual.

In some cases, an employer may accept the results of a short screening test as evidence that reasonable adjustments are required.

Are there advantages to obtaining a diagnosis?

Many people describe a feeling of relief after being told that there is a neurological explanation for challenges they had previously dealt with alone.

A diagnosis can help unlock support from employers and public services.

At a Tribunal, workers are obliged to prove that they are disabled if the employer disputes the fact that they have a protected characteristic. A formal assessment can overcome this hurdle.

People's needs may change as they age or as they move into different job roles. Some people find 'top-up' assessments valuable to track their changing requirements as they get older.

Are there challenges associated with obtaining a diagnosis?

It should be recognised that receiving a diagnosis or assessment can be a psychologically difficult time for some people – especially if they are told that it means that there is something 'wrong' with them.

As discussed below, funding is not routinely available on the NHS for the diagnosis of some neurodivergent conditions. Although inclusive employers will offer support for diagnosis, some people struggle to raise the money required to undertake an assessment.

If an employer offers to fund an assessment, they may seek disclosure of the outcome of that process. As discussed in the next section of this document, many neurodivergent workers are reluctant to disclose their condition because of the fear of discrimination.

Funding

Securing funding for a diagnosis can be one of the most significant hurdles that neurodivergent workers have to overcome.

NHS funding is not typically available for the diagnosis of neurodivergent conditions other than autism (although in England the exact situation may depend on the policy of your local Clinical Commissioning Group). Access to Work does not fund diagnostic assessments.

Please note that there is a separate statutory framework that governs the NHS diagnosis of autism spectrum conditions in England (see below for further information).

At the time of writing in September 2018, an adult diagnostic assessment for dyslexia provided by the British Dyslexia Association costs between £450 and £650 plus VAT. Similarly, diagnostic assessments for ADHD and dyspraxia are often priced in the £500 range, although there is significant variation between providers.

Securing funding can therefore represent a serious barrier to support for workers. Reaching an agreement for your employer to fund reasonable requests for a diagnostic assessment should be a priority for trade union activity around neurodiversity.

An inclusive employer will recognise that workers may have an undiagnosed neurodivergent condition, and that the up-front costs of assessments can be recouped many times through improved productivity and realising the unique talents that neurodivergent workers can bring to the workplace.

GMB's model neurodiversity employer's policy contains wording that can form the basis for a negotiated agreement on this issue.

Getting an assessment or diagnosis

Because of the significant local variation in service provision, condition-specific advice on diagnosis is beyond the scope of this document.

Useful points when seeking advice include:

- Local or national support groups are the best point of contact for condition-specific advice. Signposting to such groups is provided towards the end of this document.
- Talking to a GP can be best practice – even if public funding is not available, a GP can help eliminate possible other causes of any issues of concern.
- You should make sure that an assessor has a background in the condition in the condition that is relevant. For example, many consultants who offer a dyspraxia diagnosis service are dyslexia specialists.

A specialism in another area is not necessarily a reason to not proceed, but you are likely to receive the best service from someone who is both qualified and experienced in the diagnosis of the relevant condition.

- It may be helpful to consult a GMB Thinking Differently at Work guide to a specific condition. These contain further advice on adult diagnosis, as well as suitable indicative checklists (where appropriate).

At the time of writing, a guide on dyspraxia is available and it is GMB's intention to add other similar documents over time.

Autism spectrum conditions

Uniquely, there is a separate legal framework for autism diagnosis in England.

According to statutory guidance issued under the Autism Act 2009, local authorities and NHS bodies in England have a duty to provide a pathway to adult diagnosis.

This means that assessments can be obtained free of charge under the NHS. Contact details for local diagnostic and support services should also be advertised on your local authority's website.

Unfortunately, diagnosis can be a lengthy process. Many people wait at least a year, and availability may vary depending on your local area.

It may be possible to obtain a private assessment more quickly. This approach is not without its drawbacks: there is a risk that private assessments may not be accepted by Tribunals or the DWP.

DISCLOSING A NEURODIVERGENT CONDITION

In an ideal world, the disclosure of neurodivergent conditions would be routine, normal, and would not result in discrimination.

Unfortunately, too many workplaces currently fall far short of these standards.

Employers sometimes express frustration that neurodivergent conditions are not disclosed, or that they are disclosed at a late stage in capability proceedings.

Such employers should understand that many neurodivergent workers are reluctant to disclose their condition based on a legitimate fear of discrimination.

Almost three quarters of neurodivergent workers do not disclose their condition because of fear of discrimination.

Half of workers who disclose later regret doing so.¹⁶

Disclosure can be a difficult area to discuss.

On the one hand, an employer does not have a duty to make reasonable adjustments if it did not know, or could not have been reasonably expected to know, about a neurodivergent condition. Proving an employer's knowledge of a condition can also be key to bringing a claim of unlawful conduct under the Equality Act.

On the other, as a trade union, we cannot ignore the hard reality that disclosure has been used in too many cases to undermine and bully neurodivergent workers. Many workers experience a feeling of 'damned if you do, damned if you don't' when it comes to making a disclosure.

This dilemma was reflected in a study carried out by ACAS of neurodiversity in two public and private sector employers:

‘It was common for employees with neurological conditions to receive negative comments on some aspects of their performance prior to being diagnosed, or disclosing a neurological condition, but in most cases the problems were largely overcome once they were diagnosed or had disclosed.

‘However, it is not clear whether this would have been the case in workplaces where there was less awareness of neurological conditions, less support and fewer role models who had reached a senior level in the organisation.’¹⁷

‘Having disclosed an autism diagnosis, it’s open season on my social and verbal communication skills if the manager doesn’t like me.’

‘My first few staff reports started with the words ‘this officer will never be suitable for promotion as he is dyslexic.’

‘I’ve been badly bullied and abused. One employer fired me and said ‘employers want people who can be normal.’

Responses to surveys conducted by the Westminster AchieveAbility Commission for Dyslexia and Neurodivergence¹⁸ and the National Autistic Society³

Advice on disclosure

GMB’s position is that early disclosure should be encouraged within a genuinely inclusive workplace.

The decision to disclose must always be taken by the worker themselves.

If approached for advice on whether to make a disclosure, a GMB rep should make a careful assessment of the potential consequences – both positive and negative – of doing so.

No worker should ever be subjected to detrimental treatment because they disclose a disability. Such treatment is highly likely to represent unlawful conduct on the part of the employer.

Under Section 109 of the Equality Act, employers are responsible for unlawful discrimination carried out by any of its employees, unless the employer can demonstrate that it took ‘all reasonable steps’ to prevent that unlawful

conduct. This is known as ‘vicarious liability.’ Such reasonable steps would include establishing training programmes and implementing a neurodiversity policy.

Vicarious liability can be a powerful tool for neurodivergent workers’ representatives when they are seeking to prevent discrimination arising as a consequence of disclosure.

In the long-term, trade unions have a critical role in securing structural changes to remove the potential negative consequences of disclosure.

To aid this process, GMB has produced a model employer’s neurodiversity policy and an introductory letter to management. These can be found towards the end of this document.

ACCESS TO WORK AND OTHER OFFICIAL SCHEMES

Notes: Non-governmental sources of support may be available in some areas. Such support may include local charity grants. This section concentrates on sources of official/governmental financial support.

Access to Work is the Government's main programme for supporting disabled workers in employment, including neurodivergent workers who meet the legal definition of disability.

If your employer says that it is unable to afford reasonable adjustments, then Access to Work can be an important source of support.

The scheme is open to people already in work, or those about to start or return to work. Access to Work has a dedicated Hidden Impairments Specialist Team.

Access to Work is available in England, Wales, and Scotland. The Royal British Legion is currently the main contractor for Access to Work Services.

Unfortunately, Access to Work's funding has been cut over recent years. Returning users of the service should be aware that waiting times and the quality of other provisions may have worsened compared to their previous experience.

Workplace needs assessments

Access to Work may offer to fund a 'holistic assessment' of workplace needs. This may recommend reasonable adjustments for an employer to make. In the case of neurodivergence, workers should establish that the assessor has prior training and experience of supporting others with the same conditions.

Funding support in the workplace

Examples of other support that can be funded through Access to Work include:

- aid and equipment in your workplace
- adapting equipment to make it easier for you to use

- money towards any extra travel costs to and from work if you can't use available public transport
- support at a job interview if you have difficulty communicating
- other practical help at work, such as a job coach or a note taker

At the time of writing (September 2018), the maximum value of an annual grant was capped at £57,200. The actual value of support offered may depend on the size of your employer.

Exclusions to Access to Work

If you are in receipt of Universal Credit or Employment and Support Allowance, your eligibility for Access to Work will depend on your circumstances. For more information please see: <https://www.gov.uk/access-to-work/eligibility>

Access to Work will not fund changes that your employer should make (reasonable adjustments).

Access to Work cannot be used to fund a diagnostic assessment of a neurodivergent condition (or other conditions).

Further reading

DWP

Access to Work: factsheet for customers

<https://www.gov.uk/government/publications/access-to-work-factsheet/access-to-work-factsheet-for-customers>

Apply for Access to Work support

Applications can be submitted online at:
<https://www.gov.uk/access-to-work/apply>

Please note that applicants will need to have their National Insurance Number to hand.

Access to Work can also be contacted by phone on 0800 121 7479.

The Mental Health Access to Work Service

The Government funds a separate Mental Health Access to Work Service, which is free of charge and available to both employees and employers. The service is currently provided through Remploy.

Neurodivergent conditions are not mental health problems and care should be taken to not confuse the two issues. Neurodivergent workers who are experiencing problems at work may nevertheless be at risk of developing a mental health condition.

More information about the Mental Health Access to Work Service can be found in the separate section on neurodiversity and mental health later in this document.

Disabled Students' Allowances

A neurodivergent worker in England who is a full-time or part-time student may be eligible for Disabled Students' Allowances (DSA).

DSA is not means tested and it is available to mature students.

DSA can potentially be used to fund specialist equipment and/or a helper, and provide a small general annual allowance.

The Government's guidelines state that people may be eligible for DSA if they have a 'learning difficulty, for example dyslexia, dyspraxia or ADHD.'

Further information on applications and eligibility can be found at:
<https://www.gov.uk/disabled-students-allowances-dsas>

OTHER GOVERNMENT SCHEMES

Disability Confident

Disability Confident is the Government's flagship accreditation scheme for employers. It is run by the Department for Work and Pensions.

The core commitments that an employer must subscribe to are:

- inclusive and accessible recruitment
- communicating vacancies
- offering an interview to disabled people
- providing reasonable adjustments
- supporting existing employees

There are three 'levels' of accreditation. More information on these levels can be found at: <https://www.gov.uk/guidance/disability-confident-how-to-sign-up-to-the-employer-scheme>

There are currently seven thousand accredited employers. A full list can be accessed at (Excel file): https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/731353/disability-confident-list-of-employers.csv

Questions to ask employers include:

1. If the employer is not accredited, will they apply to become accredited?
2. If the employer is accredited, are its actions consistent with the principles of the Disability Confident scheme?

Supported internships

The supported internship programme is designed to provide a route into work for young people with an Education, Health and Care Plan (EHCP).

Supported internships are a collaboration between education providers and employers. Internships generally last a year, and they include a six-month unpaid work placement.

More information can be found at: <https://www.gov.uk/government/publications/supported-internships-for-young-people-with-learning-difficulties>

NEURODIVERSITY AND MENTAL HEALTH

GMB has produced a separate guide to mental health in the workplace. This can be accessed at: <http://www.gmb.org.uk/gmbguide-mentalhealth.pdf>

It is sometimes assumed that neurodivergent conditions are mental health problems. This is wrong and a potentially damaging misconception.

Neurodiversity and mental health are separate. If a neurodivergent worker is treated detrimentally because of their employer is relying on incorrect assumptions about mental health, then this may represent unlawful conduct.

Many neurodivergent people do not have mental health problems.

At the same time, stress, anxiety, and workplace bullying are all factors that can lead to mental health problems. Consequently, neurodivergent workers may be at a higher risk of developing mental health conditions than their colleagues.

Union reps should be aware that some neurodivergent workers have lifelong issues of self-confidence, and that receiving a diagnosis can be a difficult experience for some workers. Tact and sensitivity should always be deployed when discussing neurodiversity.

If a worker has a mental health condition that arises from their neurodivergence (such as stress or anxiety), and they are treated detrimentally at work because of their mental health condition, then this likely to amount to unlawful discrimination arising from a disability under the Equality Act.

For more information please see GMB's guide to neurodiversity and the law at work: www.gmb.org.uk/neurodiversity-law-guide.html

Workers with mental health problems that are threatening their job can receive support under the Government's free Access to Work Mental Health Support Service. This programme is separate to the main Access to Work service.

The Mental Health Access to Work Service is free for both employers and employees.

Further information about Mental Health Access to Work can be found at:
<https://www.remploy.co.uk/about-us/current-programmes/access-work-mental-health-support-service>

EXTERNAL GROUPS

External organisations can be an invaluable source of information and support.

Please note that inclusion of an organisation in this list does not represent an endorsement by GMB.

Local groups

A directory of local and regional groups can be found at:
<https://www.autismandneurodiversitytoolkit.org/contacts>

Please note that this list may not be exhaustive and independent research on local groups is encouraged.

National groups

ADHD Foundation

website: www.adhdfoundation.org.uk

email: info@adhdfoundation.org.uk

phone: 0151 237 2661

AADD-UK – The site for and by adults with ADHD

website: <https://aadduk.org/>

National Autistic Society

website: www.autism.org.uk

email directory: <https://www.autism.org.uk/services/helplines/main/questions.aspx>
helpline: 0808 800 4104

Dyscalculia Information Centre

website: <https://www.dyscalculia.me.uk/>

email: lucy@schools.co.uk

phone: 01604 880 927

Dyspraxia Foundation

website: www.dyspraxiafoundation.org.uk

email: info@dyspraxiafoundation.org.uk

phone: 01462 455 016

British Dyslexia Association

website: www.bdadyslexia.org.uk

email directory: <https://www.bdadyslexia.org.uk/contact>

phone: 0333 405 4565

Industrial sector groups

Public Sector Neurodiversity Network (this group is focused on the civil service)

twitter: www.twitter.com/PSNeurodiverse

National Police Autism Association (also covers neurodiversity more widely)

website: <http://www.npaa.org.uk/>

contact form: <http://www.npaa.org.uk/contact/>

FURTHER READING

GMB publications

GMB Thinking Differently at Work web pages

www.gmb.org.uk/thinking-differently-at-work

Neurodiversity and the law at work

<https://www.gmb.org.uk/neurodiversity-law-guide.html>

Guide to dyspraxia in the workplace

<https://www.gmb.org.uk/neurodiversity-dyspraxia-toolkit.html>

This section will be updated to include any future GMB Thinking Differently at Work publications.

TUC publications

Autism in the Workplace

<https://www.tuc.org.uk/sites/default/files/Autism.pdf>

Dyslexia in the Workplace

https://www.tuc.org.uk/sites/default/files/Dyslexia_In_The_Workplace_2013_LR.pdf

Official publications

ACAS: Neurodiversity at work research paper

[http://www.acas.org.uk/media/pdf/2/m/Neurodiversity_at_work_0916\(2\).pdf](http://www.acas.org.uk/media/pdf/2/m/Neurodiversity_at_work_0916(2).pdf)

EHRC: Employment Statutory Code of Practice

<https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>

DWP: Disability Confident autism and neurodiversity toolkit for staff and managers

<https://www.autismandneurodiversitytoolkit.org/>

Industry publications

CIPD: Neurodiversity at work

https://www.cipd.co.uk/Images/neurodiversity-at-work_2018_tcm18-37852.pdf

Other publications

The Westminster Achieve: Ability Commission for Dyslexia and Neurodivergence Neurodiverse voices: Opening Doors to Employment

http://www.achieveability.org.uk/files/1518955206/wac-report_2017_interactive-2.pdf

Support group publications

National Autistic Society

Managing an autistic employee <https://www.autism.org.uk/managing>

The autism employment gap – too much information in the workplace
<https://www.autism.org.uk/get-involved/tmi/employment.aspx>

ADHD Foundation

An employer's guide to ADHD in the workplace <https://www.adhdfoundation.org.uk/wp-content/uploads/2018/03/An-Employers-Guide-to-ADHD-in-the-Workplace.pdf>

Dyslexia Scotland

Dyslexia – a guide for employees http://www.open.edu/openlearncreate/pluginfile.php/287800/mod_resource/content/1/employees%20guide.pdf

Dyslexia – a guide for employers https://www.dyslexiascotland.org.uk/sites/default/files/page_content/employersguide.pdf

Dyspraxia Foundation

Dyspraxia/DCD in the Workplace: Help and guidance for job seekers and employees <https://dyspraxiafoundation.org.uk/wp-content/uploads/2016/10/Dyspraxia-in-the-Workplace-Guidance-for-Employees-Oct-2016.pdf>

Working with Dyspraxia – a hidden asset: guide for employers https://dyspraxiafoundation.org.uk/wp-content/uploads/2016/06/Employer_guide_to_dyspraxia_1.0.pdf

CHECKLIST FOR REPS

Checklist for union activity

Are internal communications – such as circulars – accessible for neurodivergent workers?	
Do you encourage members to request documents to be made available in different formats?	
Do meetings have clear agendas, and are agendas kept to?	
At meetings, are all members given the chance to contribute in their own time?	
Are there any reasons why current meeting venues may not be suitable for neurodivergent members – such as overcrowding, or excessive levels of noise, light, or other forms of sensory stimulus?	
Are reps confident in talking about neurodiversity, and if not, has this been identified as a training need?	
Does the union seek to engage neurodivergent members in discussions about neurodiversity in the workplace?	
Has GMB entered into discussions with the employer about neurodiversity in the workplace?	

Checklist for employer policies and practices

Does your employer have a neurodiversity policy?	
Is your employer registered with Disability Confident?	
Does your employer subscribe to the social model of disability?	
Have key personnel – such as HR staff and managers who are likely to be involved in disciplinary or capability proceedings – received neurodiversity training?	
Does your employer’s general equality and diversity training cover neurodiversity?	
Is there a named pointed of contact with whom the union can raise issues relating to neurodiversity in the workplace?	
Has your employer established a clear route through which neurodivergent workers can disclose a condition?	
Does your employer offer financial support (and other forms of support) for workers who wish to undertake a diagnostic assessment?	
Does your employer encourage neurodivergent job applicants to seek reasonable adjustments during the recruitment process?	
If your employer is in the public sector, does the employer have a clear understanding of how the Public Sector Equality Duty relates to neurodiversity?	

MAKING CONTACT – MODEL LETTER TO EMPLOYERS

This model letter has been drawn up to help initiate a conversation between union branches and their employer. Please review and amend it as required to suite your own circumstances.

Dear

Re: Neurodiversity in the workplace

As you will be aware, neurodiversity in the workplace is an issue of growing importance for employers.

[Specific concerns have been raised by GMB members, and] studies suggest that over a tenth of working-age people have conditions such as autism, ADHD, dyslexia and dyspraxia.

Despite a number of high-profile employment tribunal cases, most employers still do not have a neurodiversity policy. The CIPD advises that ‘more needs to be done to support neurodiversity at work.’

As workforce representatives, we believe that establishing a policy would be in the interests of both [EMPLOYER NAME] and our members.

Please find a draft neurodiversity policy attached, which we hope will provide a basis for discussion.

This model policy has been drafted by GMB to provide a structure through which [EMPLOYER NAME]’s obligations under the Equality Act 2010 can be fulfilled.

I look forward to agreeing a time when this matter can be discussed further.

Yours sincerely

MODEL NEURODIVERSITY EMPLOYER POLICY

1. Introduction

This policy represents an agreement between [] ('the Employer') and GMB ('the Union') that was reached on xx/xx/xxxx.

The policy covers the agreed approach of the Employer towards workers, and potential workers, who are neurodivergent, or who believe that they may be neurodivergent.

The scope of this policy covers conditions including, but not limited to: autism spectrum conditions, ADHD, dyslexia, dyspraxia, and dyscalculia (see the appendix to this agreement).

2. Principles

Both parties to this agreement believe that:

- a. All workers deserve opportunities, encouragement and support to realise their full potential
- b. A diversity of cognitive approaches is a source of great strength and value within a genuinely inclusive workplace
- c. All reasonable steps must be taken to ensure that policies, practices and culture do not discriminate against neurodivergent people

Both parties recognise that:

- d. Neurodivergent people may not have a formal diagnosis or assessment, that a lack of diagnostic support can be a barrier within the workplace for both workers and employers, and that workers must not be subject to unfavourable treatment if they choose to disclose a neurodivergent condition
- e. People who are neurodivergent can face discrimination and stigma in wider society, that they may be unwilling to disclose a diagnosis or assessment, and that workers must not be subject to unfavourable treatment because they choose to not disclose a neurodivergent condition

- f. Each person is unique and that there can be a high degree of overlap between neurodivergent conditions, and that consequently any support needs must be identified and implemented on the basis of personal evaluation and individual consultation – not assumptions or stereotypes

Both parties commit to:

- g. Support workers to obtain a diagnosis or assessment should they want one
- h. Encourage early disclosure within a genuinely supportive and inclusive environment
- i. Work to eliminate barriers (including prejudice) that neurodivergent people can face in the workplace
- j. Take all reasonable steps to ensure that internal communications, training programmes, and testing requirements (such as to complete training courses) are accessible for neurodivergent workers
- k. Raise awareness of neurodiversity in the workplace
- l. Consider changes made in response to requests and take steps to eliminate potentially discriminatory practices in the course of day-to-day activities.

3. Getting and disclosing a diagnosis or assessment

The Employer agrees to consider all requests for support for the purpose of obtaining a diagnosis within a timely fashion. Such support may be in the form of time off work to attend appointments, the provision of information, and funding for assessments by appropriately qualified persons.

The Employer will agree to all reasonable requests for diagnostic support within a timely fashion. If a request is refused, the Employer will explain its reasons for doing so in writing.

If the Employer intends to refuse a request on cost grounds and the worker is a member of the Union, the Employer will agree to first enter into discussions with the Union to identify options for funding an assessment, if such a discussion is requested by the worker.

Funding for accessing a diagnosis or assessment, where it is provided by the Employer, will not be restricted to workers against whom capability proceedings have been initiated, or are likely to be initiated.

A process will be established and publicised to encourage workers to disclose neurodivergent conditions to the Employer, although it is also recognised that workers are under no legal or professional obligation to disclose a neurodivergent condition.

As neurodivergent conditions are lifelong, the Employer will accept previous assessments undertaken by appropriately qualified persons as sufficient evidence that a worker is neurodivergent. Such assessments may include reports by specialist consultants, educational psychologists' reports, specialist Statements of Special Educational Need ('Statements') and Education, Health and Care Plans ('EHCPs').

4. Access to Work and Workplace Needs Assessments

The Employer will take all reasonable steps to assist workers with applications for Access to Work ('AtW') support (if such support is requested), and to facilitate Workplace Needs Assessments which may be conducted by AtW or independent consultants.

5. Reasonable adjustments

The Employer recognises that most requests for reasonable adjustments are not expensive or difficult to implement, and also that such adjustments can make a significant difference to the wellbeing and performance of neurodivergent workers.

The Employer will consider all requests for reasonable adjustments and respond to them in a timely fashion.

The Employer will give equal consideration to requests for reasonable adjustments that are made by neurodivergent worker. The Employer recognises that neurodivergent workers often have a clear prior understanding of the reasonable adjustments that would best support them, and that many neurodivergent workers will not require an external assessment of workplace needs.

All clear recommendations for reasonable adjustments that are made by an appropriately qualified person will be implemented unless there are exceptional reasons to not do so.

If a request for a reasonable adjustment is refused, the Employer will set out their reasons for doing so in writing in a timely fashion.

If there are compelling reasons for not accepting a request for a reasonable adjustment, the Employer will try to identify alternative reasonable adjustments that achieve that same aim.

The signatories to this agreement recognise that many neurodivergent workers have developed coping strategies and that not all neurodivergent workers will require reasonable adjustments. The signatories further recognise that neurodivergent workers may have dual or multiple diagnoses or assessments, and that reasonable adjustments should be based on the needs of the individual.

If a worker considers that a recommendation for a reasonable adjustment made in their case is inappropriate for any reason and does not want that recommendation to be implemented in their case then that will constitute an 'exceptional reason' for refusing a recommendation. No worker will be forced to comply with a reasonable adjustment recommendation against their will. In these circumstances, a written record of refusal (or discontinuation) of a reasonable adjustment will be kept.

The Employer recognises that there may be workers who, while not neurodivergent themselves, may have caring responsibilities towards people who are neurodivergent (such as parents of children identified as having special educational needs). Every reasonable effort will be made to accommodate requests for leave (or similar requests) that are made in connection with those responsibilities, and workers in this position will more generally be treated no less favourably than their counterparts who do not have caring responsibilities towards neurodivergent people.

6. Performance management and capability proceedings

The signatories to this agreement recognise that standardised employment practices can be barriers to neurodivergent workers' performance.

The Employer will use any performance management processes as an opportunity to review and improve support for neurodivergent workers, and to identify barriers that can reasonably be removed.

When concerns about a workers' performance are linked to a neurodivergent condition then performance management or capability proceedings will be halted or not initiated until any accepted reasonable adjustments have been made and an appropriate amount of time has passed to allow those adjustments to take effect.

All managers who conduct performance management or capability proceedings will, in the medium to long term, receive training on neurodiversity. The programme of such training (including timescales) will be agreed between the Employer and the Union within twelve months of the signing of this agreement.

The fact that a worker is neurodivergent, or is believed to be neurodivergent, will never be used as a reason for initiating performance management, disciplinary or capability proceedings.

7. Recruitment, progression and promotions

Neurodivergent workers and applicants will not be discriminated against during recruitment, progression and promotion processes.

Specific provision will be made to encourage neurodivergent job applicants to disclose conditions and request adjustments to recruitment, application, and interview processes.

The Employer will take proactive steps to remove elements from existing recruitment processes that are known to discriminate against neurodivergent applicants – such as unclear or overly prescriptive job descriptions, or psychometric tests that have been based on a majority non-neurodivergent sample.

8. Awareness and training

Neurodiversity will be incorporated into existing equality and diversity training programmes (both initial and top-up training).

The Employer, in consultation with the Union, will consider delivering or funding training and awareness events specifically on the topic of neurodiversity, with the programme and provider of such training to be agreed by both parties.

As covered in section 6, all managers who conduct performance management or capability proceedings will receive neurodiversity training.

9. Trade union undertakings

The Union will nominate a representative to act as a 'neurodiversity champion' to raise awareness in the workplace and act as a point of contact with the Employer, including for the sharing of guidance and best practice.

The Union will provide guidance to its members on the disclosure of neurodivergent conditions that they have, or are believed to have, to the Employer, which is based on the principle of early disclosure as best practice, unless there are compelling reasons not to do so.

The Union will raise any concerns regarding potentially discriminatory practices or incidents at the earliest reasonable and practicable stage.

10. Agreement coverage

This policy applies to all direct employees, contract and agency workers, and volunteers working for [].

11. Legislative compliance

This policy complies with current employment legislation:

The Equality Act 2010 prohibits discrimination against, and the victimisation and harassment of, people who are disabled for the purposes of that Act.

Under the Equality Act, employers also have a duty to implement reasonable adjustments for employees with disabilities.

The Government's statutory guidance states that a disability can consist of a 'developmental [condition], such as autistic spectrum disorders (ASD), dyslexia and dyspraxia.'

[Public sector employers only **]**

Public sector employers also have a duty under Section 149 of the Equality Act to have due regard to the need to eliminate prohibited conduct (including discrimination), advance equality of opportunity and foster good relations for people with a disability.

12. Signatures and commencement

This neurodiversity policy will come into force from the day of its signing.

[Name

Job title

Signed and dated on behalf of the Employer]

[Name

Job title

Signed and dated on behalf of the Union]

13. Appendix – language and definitions

The meaning of terms used in this policy

NEURODIVERSITY

Neurodiversity is the idea that there are natural and normal variations in the way that people think and process information; and that different cognitive profiles can present both strengths and challenges depending on the environment people work in.

NEURODIVERGENCE

Someone is neurodivergent if they have a cognitive profile that differs from that of the majority. For example, a person with dyslexia may be said to be neurodivergent.

DISABILITY

The term disability is used in this policy in the same sense that it is employed by the Equality Act 2010: a long-term physical or mental impairment that has a substantial adverse effect on a person's ability to carry out normal day-to-day activities.

CONDITIONS

The use of this term does not indicate a preference on behalf of either the Employer or the Union for a medical over a social model of disability.

WORKERS

For the purposes of this guide, the term 'workers' means people who directly carry out work for the Employer in a salaried or voluntary capacity. It is not a technical distinction between employees, workers, and other legal categories of work.

Examples of neurodivergent conditions

Every neurodivergent person has a unique cognitive profile. Each of the conditions listed below may be described as a spectrum and there will be a high degree of variation between people who share the same diagnostic label. Overlap between different diagnoses is also common. No two people are the same.

The below section is therefore neither a prescriptive nor exhaustive list of conditions or characteristics, and it should be used for initial reference only.

ADHD

Attention Deficit and Hyperactivity Disorder (previously referred to as Attention Deficit Disorder or ADD).

People with ADHD may experience problems with focus or be distracted from some tasks. Conversely, people with ADHD may demonstrate a very high degree of focus on other tasks ('hyperfocus') and require different stimulation levels to a typical worker. Workers with ADHD can excel in potentially intensive work environments.

AUTISM

Diagnoses that fall under the umbrella of Autism Spectrum Conditions (ASC) include Asperger's Syndrome and Pervasive Developmental Disorder Not Otherwise Specified (PDD – NOS).

Many autistic people can appear highly articulate and are able to work productively in many roles and sectors, but may struggle to understand the complexities of social interaction. Sensory inputs such as noise, heat, light and touch can be an issue for many people on the autism spectrum.

DYSLEXIA

Dyslexia is often characterised by problems with reading and writing, although a dyslexic person may encounter other challenges connected to cognitive tasks, such as sequencing, processing of information, working memory, and phonological processing. The NHS states that 'people with dyslexia often have good skills in other areas, such as creative thinking and problem solving.'

DYSPRAXIA

Also known as Developmental Co-ordination Disorder ('DCD').

Dyspraxic people may encounter problems with fine and/or gross motor activities. This may present challenges for activities that involve handwriting and some manual task. Other common characteristics include atypical responses to sensory inputs, and problems with organisation. The Dyspraxia Foundation says that 'persistence, determination and extremely hard working are all characteristics associated with dyspraxia.'

DYSCALCULIA

Dyscalculia is a neurological condition that may affect mathematical functions. Although this condition is sometimes described as being comparable to dyslexia, research is at an earlier stage and someone who is dyscalculic may not also be dyslexic.

DYSGRAPHIA

Dysgraphia involves neurological difficulties with the act of handwriting and potentially other fine motor skills, such as spelling and finger sequencing (which may affect typing).

REFERENCES

1. Advisory, Conciliation and Arbitration Service response to GMB Freedom of Information Act request, 13 July 2018.
2. CIPD, Neurodiversity at Work, February 2018 https://www.cipd.co.uk/Images/neurodiversity-at-work_2018_tcm18-37852.pdf
3. National Autistic Society, The autism employment gap, August 2016 <https://www.autism.org.uk/~media/nas/get-involved/tmi/tmi%20employment%20report%2024pp%20web.ashx?la=en-gb>
4. <https://www.nhs.uk/conditions/dyslexia/>
5. https://dyspraxiafoundation.org.uk/wp-content/uploads/2016/06/Employer_guide_to_dyspraxia_1.0.pdf
6. United Nations Convention on the Rights of Persons with Disabilities, 06 December 2006, http://www.un.org/disabilities/documents/convention/convention_accessible_pdf.pdf
7. <http://curia.europa.eu/juris/document/document.jsf?text=&docid=136161&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&art=1&cid=191680>
8. EHRC, Equality Act 2010 Code of Practice: Employment Statutory Code of Practice, page 229 <https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>
9. Mark Haddon, 'asperger's and autism,' 16/07/2009 <http://www.markhaddon.com/aspergers-and-autism>
10. Personnel Today, 'Neurodiversity ignored by seven in 10 employers,' 15 February 2018 <https://www.personneltoday.com/hr/neurodiversity-ignored-seven-10-employers/>
11. CIPD, '1 in 10 HR professionals say their organisation is now focusing on neurodiversity at work,' 15 February 2018 <https://www.cipd.co.uk/about/media/press/150218-neurodiversity>
12. <https://www.gchq-careers.co.uk/knowledge-hub/gchq-dedicated-to-diversity.html>
13. CIPD, '1 in 10 HR professionals say their organisation is now focusing on neurodiversity at work,' 15 February 2018 <https://www.cipd.co.uk/about/media/press/150218-neurodiversity>
14. Office for Disability Issues (DWP), Equality Act 2010 Guidance: Guidance on matters to be taken into account in determining questions relating to the definition of disability, pages 8 and 9 – https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf
15. The Westminster AchieveAbility Commission for Dyslexia and Neurodivergence, Neurodiverse voices: Opening Doors to Employment, January 2018, page 49, http://www.achieveability.org.uk/files/1518955206/wac-report_2017_interactive-2.pdf
16. The Westminster AchieveAbility Commission for Dyslexia and Neurodivergence, Neurodiverse voices: Opening Doors to Employment, January 2018, page 18, http://www.achieveability.org.uk/files/1518955206/wac-report_2017_interactive-2.pdf
17. Acas, Neurodiversity at work research paper, September 2016, page 45, [http://www.acas.org.uk/media/pdf/2/m/Neurodiversity_at_work_0916\(2\).pdf](http://www.acas.org.uk/media/pdf/2/m/Neurodiversity_at_work_0916(2).pdf)
18. The Westminster AchieveAbility Commission for Dyslexia and Neurodivergence, Neurodiverse voices: Opening Doors to Employment, January 2018, page 21, http://www.achieveability.org.uk/files/1518955206/wac-report_2017_interactive-2.pdf

THINKING
DIFFERENTLY
AT WORK

Toolkit