

# EMPLOYMENT LAW BRIEFING

## Neurodiversity for employers: creating a neuroinclusive workplace

Greater societal awareness of neurodiversity has resulted in employers increasingly recognising it as a valuable strand of diversity, equity and inclusion (DEI). The City and Guilds Neurodiversity Index Report 2024 found that, in 2023, 44% of businesses had neuroinclusion strategies, up from 34% in 2022 (<https://cityandguildsfoundation.org/what-we-offer/campaigning/neurodiversity-index/#report>). Many employers are looking to create neuroinclusive workplaces, which allow them to tackle the ongoing skills shortages and reap the rewards of having a truly diverse workforce.

Against this backdrop, the CIPD (Chartered Institute of Personnel and Development) has published a guide on neuroinclusion at work, which contains helpful advice for employers in creating a neuroinclusive workforce ([www.cipd.org/uk/knowledge/guides/neuroinclusion-work](http://www.cipd.org/uk/knowledge/guides/neuroinclusion-work)).

### What is neurodiversity?

The term “neurodiversity” is a relatively new term and is thought to have been coined in around 1997. Neurodiversity is an umbrella term which refers to the fact that people’s brains work differently and all minds are unique. The CIPD guide defines neurodiversity as “the natural variation in human brain functioning”.

Neurodiversity can include a range of neurological differences, including autism, dyspraxia, dyslexia and attention deficit hyperactivity disorder (ADHD or ADD). The CIPD estimates that one in five people identify as neurodivergent, although some may not have an official diagnosis.

### Neurodiversity at work

A lack of awareness and understanding of neurodiversity has meant that many workplace environments, processes, policies and management practices are not designed with thought as to how they may affect different people. Workplaces have historically been geared towards people with the most common preferences and traits; usually those who could be considered “neurotypical”.

This can create challenges and barriers for neurodivergent employees, both when

applying for roles and during employment. For example, some neurodiverse employees may find last-minute changes stressful or verbal instructions difficult to follow. The workplace environment in the wake of the COVID-19 pandemic has created additional challenges; for example, some neurodivergent employees may prefer routine and so hot-desking systems, which have increased in popularity, can be problematic.

The growing awareness of neurodiversity has led to an increase in the number of diagnoses; for example, autism diagnoses between 1998 and 2018 increased by 787% (<https://acamh.onlinelibrary.wiley.com/doi/10.1111/jcpp.13505>). An increase in diagnoses and awareness has practical implications for employers. As many people are now being diagnosed from a younger age, employers will increasingly be expected to more proactively accommodate and support employees who received adjustments throughout school and university. On the other hand, employers will also need to provide support and adjustments for employees that are undergoing testing or receive a diagnosis later in life.

This has also resulted in an increase in litigation in this area. Employment tribunal judgments in England, Wales and Scotland that were filed under the disability discrimination jurisdiction code and referenced “dyslexia” increased from zero judgments in 2015 to 111 in 2023 ([www.gov.uk/employment-tribunal-decisions](http://www.gov.uk/employment-tribunal-decisions)). Other conditions have followed a similar trend.

### Creating a neurodivergent workplace

As every brain is different, every workplace will inevitably be neurodiverse. However, a neuroinclusive workplace will actively promote and include all types of thinking. Case law highlights key areas where all employers will need to be particularly mindful of neurodivergence.

**Reasonable adjustments.** If a disabled person is placed at a substantial disadvantage by a provision, criterion or practice imposed by their employer or by a physical feature of the employer’s premises, the employer has

a duty to take reasonable steps to avoid that disadvantage (see box “Disability”).

Adjustments should be considered both during recruitment and employment. The adjustments that are required will be driven by each individual but adjustments may be needed to the work environment, the location where work is carried out, working arrangements or the equipment needed.

There are a wide range of reasonable adjustments that could be considered reasonable for a neurodivergent employee. For example, in *Bulloss v Shelter*, an employment tribunal found that potential reasonable adjustments could include specialist software, proofreading support, written confirmation of verbal instructions and the provision of a quiet place (*ET/1806293/2017*; *ET/1805354/208*). Other adjustments could include regular short breaks, providing regular and clear feedback, additional structure such as a timetable, or advance warning of changes.

For a reasonable adjustment claim to be successful, an employer must know, or ought to know, of both the disability and the substantial disadvantage. In *Glasson v The Insolvency Service*, an employee with a stammer applied for an internal promotion (*[2024] EAT 5*). Ahead of an oral interview, he notified his employer that he would need more time to complete his answers, which was permitted. Another applicant ultimately scored higher and was appointed to the role. Mr Glasson sought to bring claims based on the fact that he went into “restrictive mode”, giving shorter answers to avoid stammering. The employer had no knowledge of this disadvantage and so the Employment Appeal Tribunal (EAT) concluded that it was not required to implement further reasonable adjustments.

**Recruitment.** Recruitment has recently been a focus for promoting DEI more generally for many employers, often with a focus on gender diversity. Employers are also beginning to recognise the benefits of attracting and retaining neurodiverse employees. Neurodiverse people can have skills that other members of the population do not

have. Some advantages of these conditions can include strong organisational, pattern recognition and memory skills, as well as being creative problem solvers. This can make individuals well suited for particular roles and tasks.

Traditional recruitment techniques, such as paper application forms and in-person interviews, may pose a barrier for neurodivergent applicants or employees. For example, aspects such as eye contact or body language have historically been important but this can disadvantage neurodivergent applicants. In *Government Legal Service v Brooke*, an employer required a job applicant with Asperger syndrome (a controversial term which is no longer used as a diagnostic term for autism) to sit a multiple-choice test (UKEAT/0302/16/RN; [www.practicallaw.com/w-008-3695](http://www.practicallaw.com/w-008-3695)). The EAT held that this was an unjustified practice amounting to indirect discrimination and a breach of the duty to make reasonable adjustments.

In *AECOM v Mallon*, the EAT held that an employer had failed to make a reasonable adjustment where a dyspraxic job applicant asked to make an oral job application rather than filling in a form (UKEAT/0175/20/LA; [www.practicallaw.com/w-040-8029](http://www.practicallaw.com/w-040-8029)). The employer insisted on the employee setting out his difficulties in writing by email. The EAT held that the employer should have spoken to the applicant on the phone rather than enquiring about his difficulties by email.

These cases highlight that employers should be proactive in considering reasonable adjustments throughout the recruitment process.

**Conduct.** Cases where employees have committed misconduct linked to their neurodivergence can be particularly difficult. In *McQueen v General Optical Council*, an employee with autism, dyslexia and hearing loss was disciplined for rude and aggressive behaviour ([2023] EAT 36; [www.practicallaw.com/w-039-2365](http://www.practicallaw.com/w-039-2365)). The EAT upheld an employment tribunal's decision that this was down to his short temper or personality rather than his disabilities. It therefore dismissed the principal claim of discrimination arising from disability. Other cases have emphasised that only a loose connection is needed

## Disability

Although many individuals with a neurodivergent condition may not see themselves as disabled, they may have a disability under the Equality Act 2010 if the condition has a substantial and long-term effect on their ability to carry out normal daily activities. Whether or not day-to-day activities are substantially affected will vary in each case, but any adverse impact on communication and social interaction would be relevant (*Hewett v Motorola Ltd [2004] UKEAT/0526/03/ILB*). A formal diagnosis is not needed for the legal test to be satisfied.

In summary, it is unlawful to discriminate in employment on grounds of disability. This includes direct or indirect discrimination, as well as harassment. It is also unlawful to treat an individual unfavourably because of something arising in consequence of their disability, such as their communication skills, unless the treatment is a proportionate means of achieving a legitimate aim. If an individual is disabled, there is also a legal duty for employers to make reasonable adjustments.

For most of these claims, other than indirect discrimination, an employer will be liable only if they knew, or should have known, about an employee's disability. The challenge for employers is that many of these conditions are invisible (see feature article "Disability discrimination: challenges for employers", [www.practicallaw.com/w-026-0356](http://www.practicallaw.com/w-026-0356)). Employees may effectively mask their condition or be able to manage any symptoms through a combination of medication or other therapies or strategies, such as cognitive behavioural therapy. However, any medication or coping strategies must be ignored when assessing whether the legal definition of disability is met.

Employees are not required to disclose any condition to their employer. In fact, the CIPD's survey report, which was published in February 2024, suggests that around 30% of employees had not told their employer about their neurodivergence ([www.cipd.org/uk/knowledge/reports/neuroinclusion-at-work/](http://www.cipd.org/uk/knowledge/reports/neuroinclusion-at-work/)). This means that employers will need to remain vigilant to neurodiverse needs, even where they have not been formally notified or a condition is well managed.

between the "something" leading to the unfavourable treatment and the disability, and this will be fact-sensitive and sometimes finely balanced.

In *Borg-Neal v Lloyds Banking Group*, a manager was dismissed for using the "n word" in a race awareness training session (ET/2202667/2022). An employment tribunal found that this was disability discrimination because the manager's dyslexia was a strong factor in how he expressed himself during the session.

In *Morgan v Buckinghamshire Council*, Ms Morgan, a social worker with autism and dyslexia, was dismissed for inappropriately giving gifts to children ([2022] EAT 160). She refused an occupational health assessment, which was key to the employer successfully arguing that any unfavourable treatment was objectively justified. However, a manager had criticised Ms Morgan's "choice" to mask

her autism, describing this as deliberately withholding her condition and putting children at risk, and the EAT held that this was harassment.

These cases highlight the importance of appreciating the effect that a condition has on an individual and how that may have played a part in the misconduct.

### Top tips for employers

The CIPD guide includes a number of different recommendations for how employers can support neurodivergent employees. Employers should consider neurodiversity throughout the entire employee lifecycle. Drawing on the CIPD guide, some practical suggestions for employers are set out below.

**Plan ahead.** The CIPD guide recommends that employers undertake intentional role planning and have clear and concise job descriptions, which distinguish between core

skills and skills that are preferred but not essential. The guide also reminds employers to include a diversity and inclusion statement in all job descriptions and to invite discussions around reasonable adjustments.

**Be adaptable.** A one-size-fits-all approach is unlikely to bring out the best in employees during recruitment. Employers should remain flexible and consider alternative approaches to test an applicant's skills. The CIPD guide recommends considering alternative assessment methods, such as work trials or practical assessments. Employers could also consider adjustments such as sending questions or themes in advance, allowing more time to answer questions or being flexible about the location or the medium of any interview.

**Create a supportive culture.** The CIPD guide encourages employers to focus on creating an open and supportive culture so that employees feel comfortable talking about neurodiversity. While there will not be a quick fix for creating this culture, it is important for employers not to shy away from any health conditions and to seek to have an open dialogue with employees about any support that may be required. It may also be appropriate for employers to consider if an occupational health report is needed. This should be approached sensitively if the employee has not been formally diagnosed or has not notified the employer of any condition.

**Build awareness.** As with other aspects of DEI, building awareness among the

workforce is critical for long-term success. The CIPD guide highlights that while a "lunch and learn" can be a good starting point, businesses need to work towards achieving lasting cultural change. It recommends steps such as inviting employees to share their experiences, setting up an employee resource group, having leaders sponsor and advocate for the topic, and consulting with employees on the employer's strategy and approach.

**Review policies and processes.** Employers are advised to proactively consider neurodiversity in all workplace interactions. This should include critically reviewing all policies, processes and technology to ensure that they set the right tone and allow for equal opportunities across the workforce.

**Provide training.** Educating staff is important and employers should consider rolling out neurodiversity training, as well as more general equality, anti-harassment and unconscious bias training, particularly to line managers and managers that are focused on recruitment.

**Embrace flexible working.** Another of the principles enshrined in the CIPD guide is embracing flexible working to enable everybody to thrive. Employers should be open to flexible working and a variety of different work patterns; for example, employees with ADHD may find strict start or finish times difficult to manage.

**Consider adjustments for all.** Employers should consider if broader support could be helpful for employees, even where there is no

legal requirement to implement reasonable adjustments or no formal diagnosis. The CIPD guide suggests that employers could invite requests for adjustments to all employees in order to normalise the conversation and ensure that each individual's needs are met. Other steps could include coaching or mentoring programmes.

**Lead from the top.** Senior leaders and managers have a vital role to play in creating a neuroinclusive workforce and the CIPD guide emphasises the need for leaders to "walk the talk" when implementing an organisation's values. Senior leaders should be champions of neurodiversity and advocate and support business initiatives. Although the CIPD guide does not directly discuss disciplinary issues, the general vein of the guide is that managers should lead and communicate with neurodiversity in mind. This should generally extend to any incidents of misconduct, as well as during any performance improvement processes.

Neurodiversity, and indeed disability, is an area that is growing in visibility in the DEI area and employers are increasingly recognising the significant skills and talents of neurodivergent employees. The CIPD guide is a useful reminder to all businesses of the small steps that can be taken to create more opportunities for neurodivergent employees and foster greater inclusion in the workplace.

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