



Employment of Disabled Person Policy

Adopted: Spring 2020
Review: Spring 2023

CONTENTS

PAGE NO:

1.	INTRODUCTION	4
2.	THE DISABILITY DISCRIMINATION ACT 1995	5
3.	DISABILITY DISCRIMINATION ACT 2005	6
4.	RESPONSIBILITIES UNDER THE ACT	6
4.1.	Who is responsible for complying with the employment provisions of the Act?	6
4.2.	Who is considered disabled under the Act?	7
4.2.1.	Impairments.....	7
4.2.2.	Substantial.....	8
4.2.3.	Long term	8
4.2.4.	What if the effects come and go over a period of time?.....	8
4.2.5.	What about treatment?	8
4.2.6.	Normal day-to-day activities	8
4.3.	Who is excluded under the Act?	9
4.4.	How does the Act define discrimination?	9
4.5.	When can less favourable treatment be justified?	10
4.6.	What is a reasonable adjustment?	11
4.6.1.	Definition of Reasonable.....	11
4.7.	Post Employment Discrimination	12
5.	DISABILITY SYMBOL	13
6.	GENERAL RESPONSIBILITIES UNDER THE ACT.....	14
6.1.	Who decides if an existing or potential employee is disabled under the Act?	14
6.2.	Who decides what is a “reasonable adjustment”?	14
6.3.	Costs and who pays for them?	15
6.4.	Employment initiatives for disabled people within the County Council .	15
6.4.1.	Supported Employment Scheme	15
6.5.	Financial and practical assistance available from outside agencies	16
6.5.1.	Employment Service – Disability Service Team (formerly PACT).....	16
6.5.2.	Access to Work.....	16
6.5.3.	Employment Medical Advisory Service of the Health and Safety Executive (EMAS)	17
6.5.4.	Royal Association for Disability and Rehabilitation (RADAR)	17
6.5.5.	Employers Forum on Disability	17
6.6.	Confidentiality of an employee’s disability.....	17
7.	SPECIFIC AREAS OF RESPONSIBILITY UNDER THE ACT.....	18
7.1.	Recruitment and Selection.....	18
7.1.1.	Job Descriptions and Person Specification.....	18
7.1.2.	Advertising.....	19

7.1.3 Applications for posts	19
7.1.4. Closing Dates	19
7.1.5. Shortlisting.....	19
7.1.6. Invitations to interview	20
7.1.7. The Interview	20
7.1.8. Tests during the selection process	21
7.1.9. Making the selection.....	22
7.1.10. Occupational Health assessment	22
7.1.11. Reasonable adjustments	23
7.1.12 Informing supervisors and colleagues	23
7.1.13 First day and induction	23
7.2. Training, Development and Promotion	24
7.3. Retention of disabled employees.....	24
7.3.1. Referral to an Occupational Health Physician	25
7.3.2. Reasonable adjustments to retain staff	26
7.3.3 Redeployment	26
7.3.4. Pay Protection	26
7.3.5. Termination of employment contract	27
7.3.6. Costs and compensation awarded for discrimination under the DDA...	27
7.4. Harrassment of Disabled Staff	28
7.5. Grievances by Disabled Staff	28
7.6. Monitoring and Review	28
APPENDIX 1 – Flow Chart – Meeting our obligations under the DDA.....	29
APPENDIX 2 – Disability Courtesies	30
APPENDIX 3 – Recruitment packs in alternative formats.....	33
APPENDIX 4 – Medical clearance supplement form (for County Occupational Health Service only)	36

1. **INTRODUCTION**

The following guidelines have been prepared to provide managers with practical guidance relating to responsibilities concerning the employment of persons who fall under the definition of disabled as outlined in the Disability Discrimination Act 1995 (DDA).

These guidelines should not be viewed purely as a means of meeting obligations under the Act but should be seen as a framework of best practice which the school endorses in all of its employment policies and practices.

These guidelines should be read in conjunction with the following school policies, procedures and guidelines:

- Equal Opportunities Policy
 - Health and Safety Policy
 - Grievance Procedure
 - Disciplinary Procedure
 - Harassment, Bullying and Victimisation Policy
 - *
 - *
- *(include any other relevant policies and procedures)

There are five key principles which help employers to avoid disability discrimination:

- Have an Equal Opportunities Policy***
- Be flexible
- Do not make assumptions
- Consider whether expert advice is needed
- Plan ahead

***The Essex County Council Equal Opportunities Policy includes disability discrimination as one of the key components. Schools, where they have their own policy should review it and amend as necessary to take account of the employment implications of the DDA.

It is intended that this guidance document should embody these principles.

Please note: This guidance refers solely to the employment of disabled staff and does not cover the schools obligations in respect of disabled pupils.

2. THE DISABILITY DISCRIMINATION ACT 1995

The above Act came into force on 2 December 1996. The Disability Discrimination Act 1995 (Amendment) Regulations 2003, introduced further provisions on 1 October 2004.

One of the main provisions of the Act is the protection of disabled people from discrimination in relation to employment. Employment refers to the recruitment and retention of staff, terms and conditions offered as well as training, development, promotion and transfer opportunities. It also covers dismissal and any other detriments.

As part of this protection, employers have a duty to make reasonable adjustments if their employment arrangements, including premises, place disabled people at a substantial disadvantage to anyone else. The duty to make reasonable adjustments to arrangements has been extended to include adjustments to provisions, criterion or practice. This would include matters such as selection and interview procedures and the premises used for such procedures, job offers, contractual arrangements and working conditions. The duty applies at all stages of recruitment, during employment and dismissal.

The forms of discrimination which the Act makes unlawful in relation to employment are: (see section 4.4 for further detail):

- direct discrimination
- failure to comply with a duty to make reasonable adjustments
- harassment / victimisation, and
- disability-related discrimination

If a disabled employee or prospective employee feels that they have been discriminated against, or there has been a failure to make reasonable adjustments, the Act gives them the right to take the employer before an Employment Tribunal. In line with other discrimination legislation, the new Regulations incorporate a 'reversed burden of proof'. This means that once facts are established that suggest discrimination, the onus is on the employer to prove that he did not commit an act of discrimination, failing which a tribunal must find that the employer unlawfully discriminated.

Since October 2004, all employers are covered by the employment provisions of the Disability Discrimination Act (DDA) regardless of size. The employment provisions of the Act apply to agency, contract workers, casual and supply staff, as well as employees on permanent and fixed term contracts of employment. It does not, however, extend to voluntary helpers.

3. DISABILITY DISCRIMINATION ACT 2005

The Disability Discrimination Act 2005 makes a number of amendments to the Disability Discrimination Act 1995 (DDA 1995) with effect. The new provisions are effective from 5 December 2005. This includes provisions which:

- Extend the DDA 1995 to cover, effectively from the point of diagnosis, people with HIV infection, cancer and multiple sclerosis
- End the requirement that a mental illness must be “clinically well-recognised” before it can be regarded as an impairment under the DDA 1995

4. RESPONSIBILITIES UNDER THE ACT

4.1. Who is responsible for complying with the employment provisions of the Act?

All responsibility for complying with the employment provisions of the Act lies with the employer, which for this purpose is the Governing Body in all cases. Governing Bodies have a responsibility not to discriminate in respect of the recruitment, selection, employment and dismissal of disabled people and for making reasonable adjustments to their employment arrangements or premises for disabled employees or prospective employees. In the case of Community and Voluntary Controlled Schools, the Local Authority also has a responsibility not to discriminate against disabled employees or prospective employees when exercising their employment powers, for example when offering advice to Governing Bodies about appointments or checking that candidates meet legal requirements on health. Local Authorities too are responsible for considering reasonable adjustments and it may therefore be useful for Governing Bodies and the Local Authority to consult closely on the employment of disabled people.

The Education (Modifications of Enactments Relating to Employment) Order 1989 makes Governing Bodies of Community and Voluntary Controlled schools accountable under employment law for the way in which those Governing Bodies exercise their delegated staffing powers and this order has been amended such that Governing Bodies are now the respondents in Employment Tribunal cases, although decisions and orders (other than reinstatement/re-engagement) will have effect against the Local Authority (see 7.3.6).

The Governing Body in Foundation and Voluntary Aided schools are the sole respondents to Employment Tribunals for any applications made in relation to the employment of disabled people.

4.2. Who is considered disabled under the Act?

Disability relates to a **physical** or **mental impairment** which has a **substantial** and **long term** adverse effect on a person's ability to carry out **normal day to day activities**.

The introduction of the Disability Discrimination Act 2005 introduces a wider definition of disability and now includes people with HIV, cancer and multiple-sclerosis from the point of diagnosis i.e. before they experience the long-term and substantial adverse effect on their activities. With cancer, HIV and multiple-sclerosis therefore, there is no requirement for the individual to show that the condition is having an adverse impact on their day to day activities.

4.2.1. Impairments

Physical impairments include sensory impairments such as visual, hearing and speech. Mental impairments include learning difficulties and an impairment resulting from or consisting of a mental illness. Examples of the latter may be depression, schizophrenia, anxiety and stress. Hidden impairments are also covered (for example, mental illness or mental health problems, learning disabilities, dyslexia, diabetes, epilepsy, autism, speech and language impairments, Attention Deficit Hyperactivity Disorder (ADHD)).

The 2005 Act removes the need for mental impairments to be 'clinically well-recognised'. Individuals will still be required to establish that they have an impairment which has a long term and substantial adverse effect on their ability to carry out normal day to day activities. However, the removal of the need to be clinically well recognised means that the DDA is widened to include impairments such as 'stress' and 'anxiety'.

People with severe disfigurements, such as scars, birthmarks and diseases of the skin are also covered by the Act. They do not need to demonstrate that the impairment has a substantial adverse effect on their ability to carry out normal day-to-day activities.

An exact list of disabilities that fall under the definition does not exist, although an Occupational Health Physician will be able to give advice on individual cases as explained later in this document.

It is important to note that those persons, who recover from a disability, or where the substantial adverse effect ceases, will still be covered by the Act if it is likely that the disablement will reoccur.

4.2.2. Substantial

The Act defines this as not minor or trivial. There are a number of factors to help decide if the disability has a substantial effect. These include:

- The time taken to carry out an activity
- The way in which an activity is carried out
- Cumulative effects of an impairment
- Effects of behaviour
- Effects of environment

4.2.3. Long term

A long-term effect of an impairment is one:

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

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

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

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

4.2.5. What about treatment?

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

4.2.6. Normal day-to-day activities

A “normal day to day activity” is an activity that is normal for most people and carried out by most people on a daily and fairly regular basis.

An impairment is only treated as affecting the person's ability to carry out normal day to day activities if it affects one of the following:

- mobility
- manual dexterity
- physical co-ordination
- continence
- ability to lift, carry, move everyday objects
- speech, hearing, eyesight
- memory/ability to concentrate, learn or understand
- ability to recognise physical danger

4.3. Who is excluded under the Act?

This includes:

- people who wear spectacles
 - those with genetic disorders
 - addiction/dependency on alcohol, nicotine or any other substance
 - hayfever, except if it aggravates another condition
 - tendency to start fires
 - tendency to steal
 - tendency to physical or sexual abuse of other persons
 - exhibitionism
 - voyeurism
 - disfigurements consisting of tattoos and non medical body piercing
- Where there is no effect on the ability to carry out normal day to day activities

4.4. How does the Act define discrimination?

Discrimination occurs when a disabled person is treated less favourably than anyone else and:

- the treatment is given for a reason relating to their disability and that reason does not apply to other persons; and
- this treatment cannot be justified by the employer

There are four categories of disability discrimination:

1. Disability-related discrimination i.e. less-favourable treatment for a reason relating to the person's disability which is not justified;

2. Unjustified failure to make reasonable adjustments to arrangements, provision, criteria, practice or premises so to place disabled employees at a substantial disadvantage;
3. Harrassment – the Disability Discrimination Act 1995 (Amendment) Regulations 2003 introduced harassment as a freestanding concept in disability discrimination. Harassment occurs where, for a reason which relates to a persons disability, another person engages in unwanted conduct which has the purpose or effect of:
 - Violating the disabled persons dignity, or
 - Creating an intimidating, hostile, degrading, humiliating or offensive environment
4. Direct Discrimination – this is defined by the Act as ‘a person directly discriminates against a disabled person if, on the ground of the disabled person’s disability, he treats the disabled person less favourably than he treats or would treat a person not having that particular disability whose relevant circumstances, including his abilities, are the same as, or not materially different from, those of the disabled person’.

In other words, it will be unlawful for an employer to treat a disabled job applicant or employee less favourably simply because of his or her disability. Direct discrimination can never be justified.

4.5. When can less favourable treatment be justified?

Employers can only justify less favourable treatment towards a disabled person if:

- Such treatment is relevant/material to the circumstances of the individual case; and
- The reason for the treatment is a substantial one, i.e. not reasonable, minor or trivial

The “test” as to whether treatment is justified is applied **after** the employer has complied with the duty to **consider** and **make** reasonable adjustments to working arrangements (e.g. premises and practices).

If an employer thinks there may be a relevant and substantial reason for less favourable treatment towards a disabled person, they must then consider if this may be made less substantial or overcome by making a reasonable adjustment.

4.6. What is a reasonable adjustment?

The duty of reasonable adjustment relates to:

- A provision, criterion or practice applied by or on behalf of the employer, or
- Any physical feature of the employers premise,

Which causes a substantial disadvantage to a disabled person in comparison to anyone else. It is no longer possible for an employer to justify a failure to make a reasonable adjustment to accommodate a disabled employee. If an adjustment meets the criteria of determining what is 'reasonable', employers will have to make it (see section 4.6.1). The school will need to determine whether the adjustment is "reasonable in all the circumstances" which now expressly includes the size and administrative resources of the school. More than one adjustment may need to be made. Examples of reasonable adjustments may be:

- making adjustments to premises
- allocating some of the disabled person's duties to another person
- transferring the person to fill an existing vacancy
- altering the persons working hours
- assigning the person to a different place of work
- allowing the person to be absent during working hours for rehabilitation, assessment or treatment.
- giving the person, or arranging for the person to be given, training
- acquiring or modifying equipment
- modifying instructions or reference manuals
- modifying procedures for testing or assessment
- providing a reader or interpreter
- providing supervision
- modifying the format for applying for posts e.g. recruitment packs in alternative formats.
- modifying how posts are advertised

4.6.1. Definition of Reasonable

The Act does not define exactly what reasonable adjustments are, as they will relate to the type and nature of the service being provided.

In determining reasonableness, it is important to take into account the effect on the individual disabled person, not on disabled people as a whole. It is also essential to give consideration to the following factors:

- the effectiveness of the adjustment in preventing the disadvantage
- the practicability of the adjustment
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other assistance to help make an adjustment

It is more likely to be reasonable for an employer with a substantial number of employees and/or more resources to make a reasonable adjustment than for a smaller employer and/or one with fewer resources.

Your link HR Consultant will be able to provide you with further details and advice relating to the above provisions should you require it.

4.7. Post Employment Discrimination

It is important to note that discrimination can occur in relation to any aspect or at any stage of the employment process. There is a statutory definition of post-employment discrimination in the DDA. The writing of references for past employees, for example, is an area where discrimination is now outlawed. An employer would be acting illegally if he/she provided an unfavourable reference in respect of a disabled person for discriminatory reasons after the employment relationship has ended. As with all employment references schools must ensure that the information provided is factual, honest and up to date.

See Appendix 1 – Flow Chart – Meeting Your Responsibilities Under the DDA



5. **DISABILITY SYMBOL**

The County Council has signed up to the following five commitments and these are incorporated within the responsibilities expected of all managers within the County Council. This commitment allows the Council to use the disability symbol, which is approved by the Employment Service, and acts as a positive indication that the Council supports the employment of disabled people.

- To interview all applicants with a disability who meet the minimum criteria for a job vacancy and consider them on their abilities (i.e. Job Interview Guarantee (JIGS) Scheme).
- To ask, at least once a year, those employees with disabilities what the employer can do to make sure they can develop and use their abilities at work (i.e. Performance Development Review Scheme).
- To make every effort when employees become disabled to ensure they stay in employment.
- To take action to ensure that key employees develop the awareness of disability needed to make these commitments work.
- Each year to review these commitments and what has been achieved, plan ways to improve them and let all employees know about progress and future plans.

Under local management arrangements, the commitments given by the County Council are not automatically transferred to schools. Therefore, the disability symbol should not appear on school advertisements. Any school wishing to have further information about the disability symbol should contact the Employment Service, telephone (01206) 288788.

6. GENERAL RESPONSIBILITIES UNDER THE ACT

6.1. Who decides if an existing or potential employee is disabled under the Act?

Where it becomes evident that an individual is experiencing difficulties with their work, through potential disability, or where a potential employee is disabled, an assessment will need to be made to determine appropriate action.

Where necessary, a formal medical assessment will need to be carried out by an Occupational Health Physician, who with the consent of the employee/potential employee, may further obtain reports from their general practitioners or specialist to enable a full assessment to be completed.

Headteachers will need to provide an Occupational Health Physician* with all the relevant information required to assist them in deciding if the person is able to carry out the duties of the post for which they have applied or for which they are currently responsible. This will include a person specification and a clear job description or list of duties and responsibilities, e.g. use of display screen equipment and details of any workplace accommodation issues.

Where there is clear evidence that the person has a disability which is covered by the Act then an Occupational Health Physician* may not need to assess them for this purpose. However, they will still need to assess their suitability for the post and assist in identifying any reasonable adjustments required (see paragraph 6.2 below).

In addition to having a duty to make reasonable adjustments, the employer also has a duty to prevent foreseeable harm to employees and clients and an assessment by an Occupational Health Physician* will help in ensuring that there are not undue risks to the health and safety of the employee and others.

**This may be Essex County Council's Occupational Physician where schools subscribe to this service. Referrals can be made via your link HR Consultant.*

6.2. Who decides what is a “reasonable adjustment”?

The disabled person is most likely to be best placed to identify what adjustment(s) need to be made to help them perform their duties. However, Headteachers should also seek advice from an Occupational Health Physician to ensure that the most appropriate arrangements are implemented wherever possible. The Health and Safety Team are also able to give advice on any health and safety issue for those schools which subscribe to this service. Telephone (Helpline) 01245 436896.

The Headteacher/Governing Body must decide what is reasonable, balancing the needs and welfare of the employee/potential employee against the efficient running of the school.

6.3. Costs and who pays for them?

Not all adjustments will have a cost attached to them and many will be relatively inexpensive, e.g. furniture, adjustments to equipment or work practices. There is no specific guidance on how much employers are expected to spend on adjustments; the 'reasonable' criteria applies.

There is no separate budget provision within the County Council for the costs associated with making adjustments to meet the requirements; as such sums are included in the budget share. Headteachers/Governing Bodies will need to consider reasonable adjustments in the context of their delegated budget. Costs of capital works in Community/Voluntary Controlled schools will normally be met by the Authority although these will need to be considered in the context of a 'reasonable adjustment'. In Voluntary Aided schools, grant aids may be available with the similar proviso of reasonableness.

Financial assistance may, however, be available to both the employer and employee from the Employment Service – Disability Service Team (See paragraphs 6.5.1 & 6.5.2)

Your link HR Consultant can assist you to explore these matters.

6.4. Employment initiatives for disabled people within the County Council

6.4.1. Supported Employment Scheme

The Council operates a government scheme for supported employment for more severely disabled people. This is to give people with severe disabilities an opportunity to work within their own capabilities.

To be eligible, people have to be able to perform between 30% and 80% of what is considered normal capacity. The Council provides the job opportunity and the Employment Service will share the costs by reimbursing the employer a fixed amount to help offset that part of the work which the individual due to their disability is unable to perform. This money can then be used to cover to some extent both supervisory and support costs as well as costs stemming from the lower productivity of the employee with the disability.

It may be possible for schools to be incorporated within the County Council's scheme, although, at present, the number of places available with the County Council is limited to eight. It is intended to review this with the Employment Service.

For further information please contact your link HR Consultant.

6.5. Financial and practical assistance available from outside agencies

There is a wide range of practical help available to organisations and managers, some of these are listed below:

6.5.1. Employment Service – Disability Service Team (formerly PACT)

The Disability Service Team concentrates on bringing the work together of the Disablement Employment Advisors and the Employment Rehabilitation Service. Their aim is to provide guidance and assessment to both employers and disabled people on such things as specialist equipment, adapting premises and drawing up effective employment practices.

Contact telephone number is (01206) 288788.

6.5.2. Access to Work

External financial assistance may be available from Disability Service Team under the Access to Work Scheme. This scheme is designed to provide practical help to overcome barriers that disabled people face in the workplace. Through this scheme the Government will either pay for, or make a substantial contribution towards, the cost of additional support needed as a result of disability.

Types of support available include:

- adaptations to premises and equipment
- personal reader service
- special aids to employment
- support workers
- additional travel to work costs
- communication support at interview
- other forms of support may be considered under a miscellaneous heading

If you take on an unemployed disabled person, or have recruited one less than six weeks ago, the grant is up to 100% of approved costs for a period of 3 years. If someone is already employed, a grant will be paid of up to 80% of approved costs between the threshold of £300 and £10,000, for a period of 3 years. If approved costs exceed £10,000 over a three-year period, DWP will pay 100% of the excess.

Equipment purchased under this scheme will belong to the employee where it is 100% funded by Disability Service Team.

Where the equipment is jointly funded by Disability Service Team and the employer/or employee (as applicable), the ownership will be with whichever party provided the supporting funding (i.e.) employer or employee.

This is subject to the proviso that any equipment no longer required within the first year of provision is potentially returnable to Disability Service Team. Maintenance costs are not, however, funded by Disability Service Team.

6.5.3. Employment Medical Advisory Service of the Health and Safety Executive (EMAS)

Advice is available to employers on health and safety issues.

Contact telephone number is (01603) 615711.

Schools which subscribe to the service may wish to seek the advice of the Human Resources Health and Safety Team in the first instance, telephone (Helpline) (01245) 436896.

6.5.4. Royal Association for Disability and Rehabilitation (RADAR)

RADAR assists, through the provision of information, to promote legislation and best practice to enhance the independence of disabled people.

Specific help is also available from organisations dealing with particular disabilities.

Contact telephone number is (01206) 509509.

6.5.5. Employers Forum on Disability

The County Council is a member of this forum, which is a national network of employers committed to the development and implementation of best practice in respect of disabled people. This is in relation to both employment and service provision issues. Relevant information will be disseminated as appropriate and your link HR Consultant can contact the Employers Forum on Disability for advice as required.

6.6. Confidentiality of an employee's disability

A disabled employee has the right to request the knowledge of their disability remains confidential either with yourself, with the Occupational Health Service or anyone else in the organisation he/she chooses to tell.

Managers may feel this is difficult, particularly when you require the assistance of others to enable a reasonable adjustment to be made.

In this situation a manager will need to discuss these difficulties with the individual and explain the need for their co-operation in making the adjustment. The Act does state that failure to co-operate on behalf of the employee/applicant will mean the duty of reasonable adjustment will not apply.

7. SPECIFIC AREAS OF RESPONSIBILITY UNDER THE ACT

7.1. Recruitment and Selection

7.1.1. Job Descriptions and Person Specification

As always, there is a need to ensure that the job and person specification requirements are strictly related to the needs of the job. Criteria should not be included if they cannot be justified.

There is a need to be clear about what is meant by terms such as 'flexible and be able to work under pressure'. Avoid words such as 'presentable' as it could indicate potential discrimination to a disabled person, for example a person with a facial disfigurement. A more acceptable alternative would be a 'neat and tidy appearance'.

It is possible to stipulate essential health requirements, provided they can be justified and that it would not be reasonable to waive them, in any individual case.

There is also a need to be careful about requiring someone to hold a driving licence if all the job requires is occasional driving. Such an expectation could exclude a person who is, say, visually impaired and be seen as discriminatory.

If the postholder is required to visit other locations in the course of their job and public transport is not feasible, the appropriate wording is 'hold a current driving licence or have access to a driver'. Some jobs will actually require the postholder to be the driver e.g. driver/handyperson or mobile library driver in this case the appropriate level of driving licence should be stated.

Any qualifications stipulated need to be necessary for the job. A person with learning difficulties who applies for a post and does not have the requested academic qualifications will be discriminated against if it is shown that the qualifications were not necessary and she/he is otherwise the best person for the post.

This principle relating to the over-specification for jobs holds good for **all** applicants as a broader equalities issue.

7.1.2. Advertising

There is a need to ensure that what the advert describes as requirements for the post match those on the job description and person specification.

There is no specific requirement for job advertisements to be placed in specialist publications/newspapers for disabled people. However, should you wish to advertise in such a publication your link HR Consultant will advise you on this.

7.1.3 Applications for posts

It may be difficult or impossible for a disabled person to complete the standard application form and read the associated paperwork. In these cases, Headteachers should be prepared to make appropriate adjustments to information for applicants, e.g. large print, audio cassette, computer disk and to accept alternative format applications, e.g. CVs rather than 'standard' application forms. Your link HR Consultant will be able to offer advice and guidance on this (see Appendix 3).

7.1.4. Closing Dates

It may also be necessary for managers to accept a late application or extend a closing date for a position if an applicant with disabilities has a problem in meeting it. How reasonable the extension of the closing date will depend on the individual circumstances of the person and the pressures to fill the post.

7.1.5. Shortlisting

In accordance with equal opportunities policies/guidelines and good recruitment and selection practice, shortlisting should be carried out against the requirements of the job description and person specification. Disabled people should not be considered any differently from any other applicant.

It is essential to avoid making assumptions when shortlisting e.g. that a person who uses a wheel-chair will not be able to file or shelve books or a person with a visual impairment will not be able to use a computer.

If you are aware at this stage that the disabled applicant is at a substantial disadvantage due to their disability, you should already be considering any reasonable adjustments that may need to be made at the interview stage.

7.1.6. Invitations to interview

When inviting applicants to interview and arranging venues, Headteachers/Governing Bodies need to be aware of any particular requirements or arrangements that a disabled applicant may need in order to attend the interview. If applicants have detailed any specific disabilities or requirements on their application form, it is advisable to contact them to clarify any particular arrangements necessary before calling them for interview. Arranging a pre-interview visit may be useful.

All applicants should be asked in the invitation to interview letter, whether they have any particular requirements or if you need to make particular arrangements in order for them to attend. Ask them to let you know well before the interview date in order that you have time to make any adjustments required. This will mean you will have to ensure that you give sufficient notice of an impending interview.

7.1.7. The Interview

To help a disabled person attend an interview Headteachers/Governing Bodies may need to make an adjustment to standard arrangements. Examples of reasonable adjustments may be:

- changing the place/time of the interview
- allowing a friend or relative to attend for support or to help with the interview process
- allowing/providing an interpreter for the deaf/speech impaired
- allowing a longer period of time for the interview
- providing a member of staff to accompany the applicant to the interview venue
- allowing a break during the interview

What is a reasonable adjustment will depend on the applicant's individual circumstances.

Even if you have no prior knowledge of a disability on the interview day, you may still have some duty of reasonable adjustment to the interview arrangements. However it is likely to be of a lesser degree than if you had advance notice of the disability. Headteachers/Governing Bodies should, however, be flexible wherever possible.

Most people are nervous when attending interviews and a disabled candidate may feel even more nervous. It is your role to try and put all applicants at ease and reassure them that any disability will not unreasonably affect the consideration which they will receive for the job. Go out of your way to be helpful to them and make the process a little easier.

When conducting the interview there is a need to ensure that any discussion concerning a candidate's disability is related to the individual's capacity to undertake the job and any reasonable adjustments that may need to be made.

Interviewers may need to be flexible about the interview format but the following principles apply:

- Don't make assumptions about a candidate's ability. The standard range and order of questions applicable for the post should apply to all candidates in order to clarify their ability to do the job.
- Where a candidate's ability to undertake the job (or an element of the job) will be dependent on reasonable adjustments, e.g. job design or working environment, this will need to be explored in a sensitive and job objective manner at an appropriate stage within the interview.
- As with all interviews, the format of the interview should be explained to all candidates. If a disabled candidate raises the issue of their disability early in the interview, the interviewer may need to be flexible in the way they respond to the applicant taking into account their wishes.

Your link HR Consultant will be able to give further advice as required.

7.1.8. Tests during the selection process

If using any sort of selection test, whether it be an internally or externally designed test, there is the need to ensure this does not unfairly discriminate against disabled people. There may also be a requirement to make a reasonable adjustment(s) in the application of such tests. Some examples may be:

- allowing a longer completion time
- allowing the test to be completed in private
- changing the venue of the test
- allowing the use of specialist equipment in the completion of the test
- allowing an interpreter to help with the test
- providing the test in alternative formats e.g. braille

This may be particularly relevant in the recruitment of Headteachers where presentations are commonly used as part of the selection process. Where schools use Occupational Personality Questionnaires as part of the selection process, advance notice of any special requirements should be given to the tester who can arrange for appropriate alternative versions.

Your link HR Consultant will be able to advise you in these matters.

7.1.9. Making the selection

The person who is best suited and qualified for the post should be appointed. Therefore if a disabled applicant is not the best matched against the job description and person specification then they should not be appointed.

The Disability Discrimination Act does not prohibit employers from treating disabled applicants more favourably than anyone else. It is our view that favourable treatment can only be applied to a disabled applicant if all other things are equal in relation to the requirements of the job description and person specification. This is whether or not a reasonable adjustment needs to be made to facilitate the appointment of the disabled applicant.

7.1.10. Occupational Health assessment

In accordance with the existing procedures all potential employees must complete a confidential medical questionnaire (e.g. Form 7021) to assess their suitability in health terms to undertake the job for which they have applied. It is essential that:

1. The medical questionnaire remains confidential to the Occupational Health Service and is not opened by administrative or other relevant staff;
2. Only the successful applicant following interview is screened. If not the selection process could be considered discriminatory;
3. The Occupational Health Service must be made aware of any discussions about disability or adjustments agreed at interview, or other issues that may require the advice of an Occupational Health Physician. This information should also include:
 - the precise nature of the duties
 - hours of work
 - any potential hazards
 - job descriptions
 - person specification

For those schools who use the County's Occupational Physician, the information should be sent to the Occupational Health Physician on Form 7021A which supplements the covering Form 7021 accompanying the medical questionnaire. (See Appendix 4).

If the Occupational Health Service identifies a disability or potential disability from the information given on the medical questionnaire, the applicant may be called in for an appointment with the Occupational

Health Physician, or further information be sought by the Occupational Health Service from the applicant's general practitioner.

7.1.11. Reasonable adjustments

Once it is clear that the disabled applicant is the best person for the job, Headteachers/Governing Bodies will need to consider whether, in order to employ this person, any adjustments need to be made. Some examples may be:

- Moving furniture to accommodate a wheelchair or allow easier access or mobility for those with visual impairments
- Providing specialist equipment
- Allowing the person to use their own specialist equipment, this may mean having to adapt existing equipment to enable compatibility between systems
- Allowing/providing a reader or interpreter
- Providing different accommodation
- Allowing flexi time/altering hours of work
- Allowing time and privacy for taking medication
- Reallocating minor tasks required in the post that the disabled applicant is not able to undertake e.g. driving, lifting things from high shelves
- Providing a place for a guide dog
- Allowing reasonable time off for treatment/rehabilitation

7.1.12 Informing supervisors and colleagues

At any stage in the selection process, if you feel there is a need to inform other staff of the applicant's disability, you must discuss this with the individual first and get their permission to do so. You may want to inform colleagues and supervisors particularly if they need to provide assistance with the employment of this person. In doing this you may need to provide some detail of the requirements of the Act particularly if there is a lack of understanding by colleagues and supervisors. Your link HR Consultant will be able to provide assistance (see paragraph 6.6 on Confidentiality).

7.1.13 First day and induction

The first day in a new job can be a daunting experience so Headteachers/Governing Bodies should always make this a positive experience.

As part of the preparation for induction, Headteachers/Governing Bodies should ensure:

- someone has been allocated to be with the new employee, at least on the first day to welcome them and to help them become familiar with the surroundings, e.g. toilets, fire exits;
- any adjustments which were agreed have been carried out or at least inform the person if they haven't (in advance), the reason why and the date they will be carried out;
- someone has been allocated to assist those with mobility and sensory impairments with fire and evacuation drills;

The first day and initial induction period is a good time to identify any other potential barriers with the employee and to discuss ways of overcoming them.

7.2. Training, Development and Promotion

All disabled staff must be afforded the same induction, development and promotion opportunities open to all other staff.

All staff should be considered for promotion according to their abilities. A disability may not affect their ability to do a job at a higher grade. A person's career prospects should be considered flexibly. A disabled person may do a job differently from another employee, but just as effectively.

Once again, to enable to a disabled employee to undertake internal development opportunities, some adjustment may be required. Some examples are:

- changing venues for people with mobility problems
- changing times of courses
- using alternative training aids/methods
- for the sensory impaired - allowing an interpreter into the room

Under the Act, external trainers, as providers of goods and services, also have the duty of reasonable adjustment.

7.3. Retention of disabled employees

If existing staff become disabled during their employment with the school or the effects of an existing disability worsen, every effort should be made to ensure their continued employment within the school. This may also require a reasonable adjustment/s to resolve any difficulties the individual may face.

7.3.1. Referral to an Occupational Health Physician

Should you have a member of staff in this situation, the individual will need to be referred to an Occupational Health Physician, via your link HR Consultant (if appropriate). The Occupational Health Physician will be able to advise on the suitability of the employees' present job, what jobs they may now be suitable for and what special requirements are needed.

There is a need to ensure that the Occupational Health Physician has a full picture of the situation affecting the employee and the school.

The background information supplied to the Occupational Health Physician should include:

- precise nature of duties including details of any hazards (e.g. copies of risk assessments) and a job description and person specification;
- main concerns and reason for referral;
- details of any relevant discussions with the employee or any potential adjustments being considered;
- summarise relevant points and provide copies of any accident reports;
- relevant employment details, length of service, nature of working environment, any capability, disciplinary or industrial injury issues;
- details of any absence – including a written summary of the occasions, their duration and reasons for absence.

As part of the referral process, the information provided will be discussed with the employee by the Occupational Health Physician.

If using the County Occupational Physician, following the assessment, the Occupational Health Service will provide a written report detailing their opinion (usually via the HR Schools Team) and recommendations as appropriate. This may include:

- an opinion about fitness to work
- a prediction about the likelihood of a return to work
- an opinion about whether work factors or hazards have contributed to ill-health or absence and how these could be modified
- recommendations about restrictions or modifications which could be made in job content or arrangement
- advice about fitness for alternative duties
- suggestions regarding help or support which could be offered by the council or other agencies
- advice about the necessity of further assessment or monitoring

The Occupational Health Centre will also send a copy of the written report to the employee.

7.3.2. Reasonable adjustments to retain staff

Once again such adjustments will be specific to the individual circumstances. The staff member concerned will probably be best placed to tell you what their requirements are. Remember to see or speak to the staff member regularly and inform them of the procedure as well as the next steps in the process. The employee will be entitled to have a trade union representative or colleague/friend present at these meetings.

Some examples of reasonable adjustments include:

- rearranging work methods/work environment
- reallocating minor tasks the disabled person can no longer undertake
- permanent/temporary reduction or change of hours
- allowing trial periods
- retraining/additional job coaching
- redeployment into a suitable existing vacancy
- providing/allowing specialist equipment
- time off for rehabilitation/therapy etc
- educating other colleagues about the employee's disability

7.3.3 Redeployment

If, following medical advice, the employee is considered unable to carry out the duties of their substantive post due to a disability, there is a need to consider redeployment within your own school or, if appropriate, e.g. for Community and VC schools, within the County Council as a whole. Your link HR Consultant will be able to help you with this process.

There is no obligation to create a special post for the employee. Any redeployment needs to be set into the context of existing suitable vacancies, (subject to the reasonable adjustment provisions). Retaining may be required and this will need to be considered in the context of school training policies, procedures and budgets.

7.3.4. Pay Protection

It is likely that any 'reasonable adjustments' made will not affect an employees existing terms and conditions of employment.

However, if it is necessary for an employee, due to their disability, to be redeployed to another post which is at a lower grade than that of their substantive post, consideration should be given to protecting pay for a specified period. As an example, County Council provisions allow for the full protection of basic salary for three years from the effective date of change. Protected salary will continue to include annual pay awards but will not allow for any further incremental progression within the protected grade.

7.3.5. Termination of employment contract

Termination of employment should be viewed as a last resort and all other possibilities considered first. If it is not possible either to make a reasonable adjustment and/or redeploy the person within an agreed timescale it will be necessary to terminate their employment on the grounds of capability.

Any termination of employment of an employee that relates to their disability will need to be justified. The advice of an Occupational Health Physician will need to be taken prior to the dismissal occurring. Termination of employment should be viewed as a last resort and all other possibilities considered first, e.g. reasonable adjustments, redeployment etc. Your link HR Consultant will advise you of the appropriate procedures.

Any termination of employment may or may not be linked to medical retirement with the release of pension. It cannot be assumed, however, that employees who have rights under the Disability Discrimination Act 1995 will always fall into the criteria for medical retirement should they be experiencing difficulties in their present job.

7.3.6. Costs and compensation awarded for discrimination under the DDA

If any termination of employment of an employee that relates to their disability cannot be justified under the Act, Governing Bodies may be called upon to explain their actions before an Employment Tribunal ([see 4.1](#)).

Under Section 37 of the Education Act 2002, costs associated with dismissals, including legal costs and compensation awards by Employment Tribunals, cannot be deduced from the delegated budgets of Authority maintained schools, unless the Authority has good reason to do so. A good reason may well be where the Authority had advised the Governing Body that dismissing a disabled person was likely to be judged unfair and the Governing Body had acted against that advice. Schools should consult the Authority at the earliest opportunity about any issue relating to the employment of disabled people, as failure to do so may also be a good reason for the Authority not to meet any costs.

There are no specific arrangements in law for Employment Tribunal costs which did not involve termination of employment (e.g. where costs are awarded in cases

brought under the DDA of discrimination against disabled job applicants). However, the Authority has considered this in the context of its severance payments policy and will treat such cases in a similar way to dismissal situations, i.e. the Authority will pay costs/compensation awards where it has been consulted and where the Authority has approved any action proposed by the Governing Body.

7.4. Harrassment of Disabled Staff

Headteachers/Governing Bodies need to make their staff aware that the harassment, victimisation and bullying of employees with disabilities (as with any other employee) will not be tolerated and that such behaviour will be considered a disciplinary offence under the School's Disciplinary Procedure.

7.5. Grievances by Disabled Staff

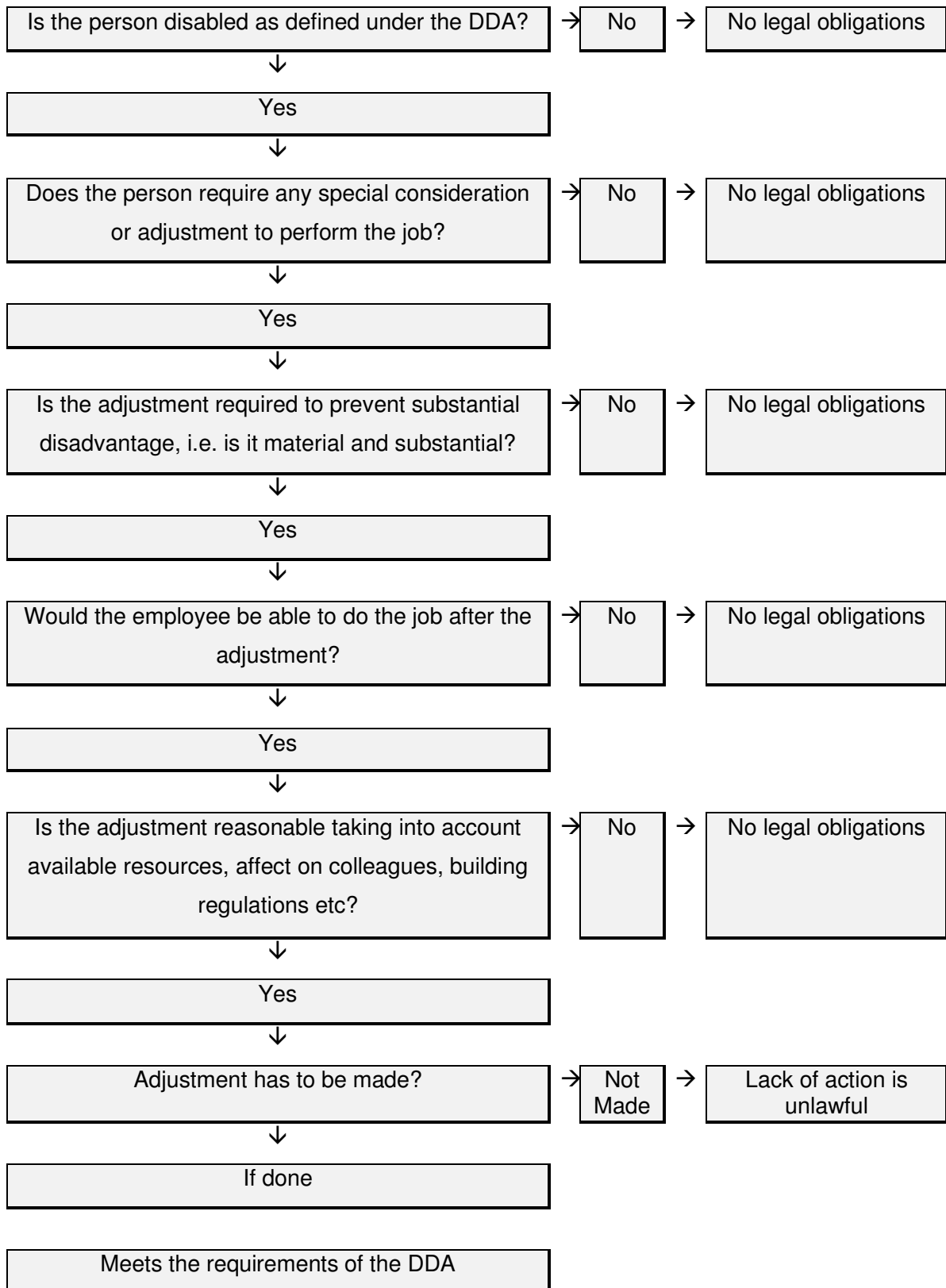
If any member of staff with a disability is aggrieved about their treatment within the workplace they will have a recourse through the school's Grievance Procedure.

7.6. Monitoring and Review

Whether it is a new recruit who is disabled or an existing employee who has become disabled, Headteachers should regularly monitor and review how they are getting along in the workplace. This means ensuring that whatever reasonable adjustments have been agreed are in place and are still appropriate. It may also be necessary to take further action and this should first be agreed with the employee. Such discussions should take place as part of the normal line management process.

At any stage it is good practice to put any action you agree in writing to the employee. Include a timetable for implementation and ensure that any changes to the timetable are explained.

APPENDIX 1 FLOW CHART MEETING OUR OBLIGATIONS UNDER THE DDA



APPENDIX 2

DISABILITY COURTESIES

People with disabilities can face discrimination in all areas of life. Much of this arises from other people's negative attitudes and misconceptions about disability. In the workplace, this lack of understanding and awareness creates significant barriers to equality of opportunity for disabled people.

Governing Bodies, Headteachers and staff need to recognise that these barriers are often reinforced by small details of language and behaviour that may seem insignificant but nevertheless reaffirm inaccurate assumptions and cause unnecessary offence.

By recognising this, and by understanding the feelings of disabled people we can do much to guard against unintentional discrimination in recruitment, whilst ensuring that disabled employees can compete and flourish on equal terms in the workplace.

Most people want to treat disabled employees, job applicants and customers the same way as everyone else but aren't always sure how to go about it.

- **Don't confuse access with wheelchairs.** Fewer than 5% of disabled people are wheelchair users.
- **Don't confuse disability with illness.** The general health of most disabled people is as good as that of anyone else.
- **Don't assume 'blind' always means without any sight.** Only 4% of people who are registered as blind have no vision at all. The majority of blind people have impaired vision, but retain partial sight.
- **Don't assume 'deaf' always means without any hearing.** Most deaf people have some useful hearing with the assistance of hearing aids.
- **Disabled people are individuals just like everybody else.** Don't make assumptions about their abilities or their needs. Don't forget some disabilities are hidden, for example diabetes, epilepsy and mental illness.
- **If you aren't sure how something might affect a disabled person, ask them for advice.**

Communication

- If a disabled person is with someone, talk to the disabled person directly, not to the person who is with them. This also applies to a deaf person accompanied by a sign language interpreter.
- When talking to a deaf person, find out - if necessary in writing - if they can understand you or whether they lip-read. If they do lip read, make sure your face is in the light, look directly at the person, speak clearly and naturally, remembering to keep your hands away from your face. (Relatively few people can lip read as it is a difficult skill to learn requiring intense concentration. Many deaf people prefer to communicate through sign language.)
- When you first meet a blind person, introduce yourself. When you are going to move away, tell them. Don't leave them talking to an empty space.
- When you are talking to someone with a speech impairment, concentrate on what is being said, be patient and don't try to guess what they want to say. If you don't understand, don't pretend you do.
- If someone has difficulty understanding you - perhaps because they have a learning disability - be patient and be prepared to explain something more than once. Concentrate on using simple language.
- When talking to a wheelchair user, try to ensure that your eyes are at the same level as theirs, perhaps by sitting down. Don't lean on the wheelchair - it is part of the user's personal space.
- Avoid asking personal questions about a person's disability, such as 'Were you born like that?' But an employer could ask 'Does your disability affect your capacity to do this job?'
- If someone looks 'different', avoid staring. Concentrate on what they are saying, not on the way they look.
- When you are talking to an adult, treat them like an adult.

Assistance

- If someone looks as if they need assistance, offer it, but wait for them to accept before you help.
- When guiding a blind person do not push or pull them. Ask if they would like to take hold of your arm. If there are any steps tell them whether the steps go up or down.

- Remember that guide dogs for blind people, hearing dogs for deaf people and other assistance dogs, are working dogs, not pets. They should not be fed, patted or distracted when they are working.
- Above all put yourself in the disabled person's place.

Most of the above points are just good manners.

Language

Some of the words and phrases we use offend disabled people, because they suggest that the disabled person is dependent or helpless.

Some words such as 'cripple' or 'retarded' have become terms of abuse or are used to make fun of disabled people.

Below are some common words to avoid with suggested alternatives:

<u>Do not say</u>	<u>Use</u>
the disabled	Disabled people/people with disabilities
Suffering from/crippled by/afflicted by/a victim of	a person who has/a person with
the deaf	People who are deaf/hard of hearing
the blind	People who are blind/have a visual impairment
deaf and dumb	Deaf without speech
Mentally handicapped/subnormal/backward	a person with a learning disability
Handicapped	Disabled
an epileptic	a person with epilepsy
Confined to a wheelchair/wheelchair bound	Wheelchair user
Spastic	a person with cerebral palsy
Mongol	a person with Downs Syndrome
do you have 'special needs'	What are your particular (access) requirements?

APPENDIX 3

RECRUITMENT PACKS IN ALTERNATIVE FORMAT

Offering recruitment packs in alternative formats to disabled persons enables them to have greater equality of opportunity to access the recruitment process. This not only complies with the provisions of the Disability Discrimination Act 1995, but accords with good employment practice.

Candidates with disabilities who are actively seeking work are likely to have the assistance of a Disability Employment Adviser – Employment Service who is able to give them support with the application process.

The County Council is only currently able to offer Forms SD1 and SD2 in alternative formats but are considering extending this resource. In the meantime, schools should give consideration to providing alternative format recruitment packs as necessary.

Possible alternative formats:

Large print
Audio cassette
Computer disk (word version)
Braille

Contents of the complete Recruitment Pack which may be provided in alternative format:

- Application form
- SD2
- Equal Opportunities statement
- Information about the school
- Job Description/Person Specification

1. Large print version

A large print version of any recruitment pack should be based on a minimum of 14 pt size print (Arial) and follows other recommended guidelines i.e.

- clear type face which is semi or sans serif, e.g. Arial, Helvetica
- avoid light density type
- keep layouts simple and clear
- left hand justified margin (ragged right hand margin)
- double or 1½ line spacing - as opposed to single spacing - with appropriate additional spacing between paragraphs and on charts/columns etc.

- avoid use of italics
- avoid excess use of capitals
- good contrast is important (black on a pale background is best)
- do not overprint text on fussy backgrounds
- use bold artwork/graphics if using it at all
- use good quality paper minimum 110 GSM or conquer paper
- don't use very glossy or semi transparent paper
- print documents single sided, not back to back
- **avoids dotsto denote text entry use lines**
- **use bold type to indicate action required e.g. response to question**

Who might require a large print version?

Disabled persons with quite significant visual impairments can benefit from the availability of large print documents.

2. Audio cassette version

An audio cassette version would contain a recording of the complete recruitment pack, prefaced by an introduction.

It would be usual to enclose paper copies of the recruitment pack with the disk or large print or computer disk versions of the relevant forms if this is more helpful to the applicant.

If these alternative formats do not prove suitable, then there is a need to explore an alternative way of assisting an applicant e.g. allowing them to make a cassette recording of their application based on the questions asked on the application form.

Who might require an audio version?

Those requesting an audio version could include a wide range of applicants, from those with a visual impairment to those with a learning impairment, where an audio version will be more helpful than printed text.

3. Computer disk version

A complete recruitment pack could be made available on computer disk. The disk(s) should contain the 'information' documents from the recruitment pack and the 'forms' that will need to be actioned by the applicant.

Who might require a computer disk version?

This version may be required for a number of reasons e.g.

- Visual impairment, where the applicant has use of visual enhancing software enabling them to enlarge the text on screen to both read the recruitment pack and complete the application/other supporting forms.
- Applicants without sight who have use of voice synthesiser software to read the information on disk, both to gain access to the information within the recruitment pack and to enable them to complete the application and other supporting forms.
- A range of other disabilities making it difficult for an applicant to write. Provided they have use of a computer (either visual display or voice synthesiser software) the disk version would provide an alternative method of completing the application and other supporting forms.

4. **Braille version**

Although more difficult to produce, consideration may be given to providing a Braille version of any recruitment pack.

Audio and Braille translations may be provided by:

Regional Transcription Centre
Anglia Polytechnic University
Victoria Road South
CHELMSFORD CM1 1LL
Tel: 01245 493131 ex. 3175
Named contacts: Steve Carey

Alternatively, applicants may have the support of a Disability Employment Adviser or a family member who would be able to go through any printed documentation. Other alternatives may be to spend some time with the applicant to personally go through the job description and person specification with them.

Any applicant with access to Chelmsford, Harlow or Colchester Libraries may wish to use the Kurzweil machine that scans a printed document and reads the text aloud.

5. **Timescales for applicants**

If there is delay in providing the 'alternative format' recruitment pack to an applicant there may be a need to extend the return date appropriately.

This information does not cover every eventuality or have all the answers but demonstrates the need for us all to think laterally and work with individual applicants to respond to their particular needs. Your link HR Consultant will be able to advise you on any issues that arise.

APPENDIX 4

FOR MEDICAL CLEARANCE SUPPLEMENT TO 7021

To: The Occupational Health Centre

From: _____ (School)

Part A

To be completed by the submitting School

I attach a copy of the Job Description for post _____

The following adaptations are proposed in order to meet the special requirements of
_____ (name of candidate)

_____	<input type="checkbox"/>
_____	<input type="checkbox"/>
_____	<input type="checkbox"/>
_____	<input type="checkbox"/>

Part B

To be completed by the Occupational Health Physician

I find _____ is fit for appointment to the staff of the County Council/school in the capacity stated, subject to my comments below:

I agree the adjustments ticked above.

I advise that the additional adjustments are made:

Further information from the medical declaration indicates the following impact on work:

For further information, additional copies of this document or to pass on your comments, please contact:

By telephone:

Michelle Spicer
HR Consultant, Schools HR Advisory Team on
01245 436837 or ednet 30837

By email:

michelle.spicer@essexcc.gov.uk

By post:

Essex County Council
Human Resource Service
HR Schools Team
County Hall, Chelmsford CM2 6WN

Essex County Council – making Essex a better place to live and work

The information contained in this leaflet can be made available in alternative formats: large print, Braille, audio tape or disk. We can also translate the information into languages. Please call 01245 434090



INVESTOR IN PEOPLE



Printed on 75% recycled paper.