

A person from behind, wearing a dark suit jacket and a light blue shirt, holds a white rectangular sign. The sign features the text 'Disclosing A disability' in a bold, sans-serif font. 'Disclosing' is in dark blue, 'A' is in black, and 'disability' is in a vibrant pink. The person's hand is visible at the bottom right of the sign.

Disclosing A disability

Disclosing a disability is an individual decision, and there is no obligation on anybody to do so.

However, there are many reasons why disclosing a disability to a current or potential employer is a positive action that will empower, protect and assist you in the workplace.

Legislation is in place under the Equality Act 2010 to assist and protect a person with a disability in employment or seeking work, but in many cases the protection and assistance that legislation offers is dependent on the individual disclosing their disability.

This guide outlines some of the advantages that disclosure can trigger when related to current equality and employment law, when you are obliged to disclose a disability and when you are not, and some of the wider issues around creating a culture and a working environment where people feel able to disclose.

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Disclosing a disability while in employment

If you are already in employment and you become disabled, or have a disability you have not yet disclosed, you may fear that being open about your disability to your employer may put you at risk of prejudice or discrimination.

In recent research carried out by disability right group Radar, three quarters of disabled people working in senior management roles who had the option to conceal their disability still chose to do so¹. You may feel that if you become disabled while already in a job, your em-

“People didn’t disclose because they feared discrimination. I was voted off committees. What gave me confidence was seeing attitudes start to change. That began with the students, but it’s starting to happen everywhere. Legislation gives me confidence.”

—UCU member

ployer could see that as changing the criteria you were employed under. But being open about your disability and having the appropriate adjustments made to help you do your job is your right by law. With 6.9 million disabled people of working age in Britain (19% of the working population)² and the majority of people likely to develop some kind of disability in the future, greater openness around disability is a crucial priority in increasing equality and improving working conditions for all.

Reasonable adjustments

Embedded in the Equality Act 2010, legislation exists to help and protect those who choose to disclose. Under the Act an employer has a legal duty to make ‘reasonable adjustments’ for both job applicants and current employees who disclose a disability.

Reasonable adjustments are changes that should be made to avoid putting somebody with a disability (temporary or permanent), at a disadvantage compared to somebody without a disability. These may relate to working arrange-

ments or any physical aspect of the workplace. In the Equality Act they are described as ‘provisions, criteria and practices’, ‘physical features’ and provision of auxiliary aids’. Examples may include:

- A change in working patterns is required due to a person’s disability, for example delegating some duties to another employee or allowing that person to be absent during working hours to attend treatment or rehabilitation.
- Extra equipment is required to enable a disabled employee to carry out his duties, such as specialist computer software or an adapted telephone. The employer is likely to be obligated to provide this.
- Physical changes to the working area are necessary for a person with a disability to access and carry out their work easily and safely, such as a ramp or increased space. The employer must look into providing this.
- An applicant with a hearing impediment applies for a job and requires a sign language interpreter in the interview. They should contact the employer to arrange this.

The law forbids the employer from making a disabled worker pay for any of these adjustments.

The advice for employers on the Equality and Human Rights Commission (EHRC) website states that:

“The duty to make reasonable adjustments aims to make sure that, as far as is reasonable, a disabled worker has the same access to everything that is involved in doing and keeping a job as a non-disabled person.

When the duty arises, you are under a positive and proactive duty to take steps to remove or reduce or prevent the obstacles a disabled worker or job applicant faces.

You only have to make adjustments where you are aware—or should reasonably be aware—that a worker has a disability.”

Having disclosed your disability and had reasonable adjustments to your work made, you may be concerned that your employer could discriminate against you in future. Again, the Equality Act is designed to protect you from this. EHRC guidelines state that providing a worker with reasonable adjustments:

“...must not be a reason not to promote a worker if they are the best person for the job with the adjustments in place”

Remember that most adjustments cost little or nothing and that Access to Work funding may be available to assist the employer financially with a government grant. You can find out more about Access to Work funding at www.direct.gov.uk/en/disabledpeople/employmentsupport/workschemesandprogrammes/DG_4000347.

Changing environments, changing working patterns, changing technology. These shift with no assessment of the effect on those with a disability.”

—UCU member

Working practices and technology change constantly and very often without consultation with the people who do the job. If there is a change to your work pattern or practice that is incompatible with your disability, you are within your rights to demand a reasonable adjustment, and this would be the point to disclose if you have not already done so. Reasonable adjustments should not be seen as a one-off

thing, but regularly reviewed as part of an ongoing process. It is also important to remember that a reasonable adjustment is very often an anticipatory measure that has not been carried out by an employer. An employer should not just react to the changing requirements of its workforce, but attempt to make working accessible to all in the first instance.

Limits

Although these legal obligations are in place, there can be limits to these obligations, hence the word ‘reasonable’. The adjustment has to remedy the disadvantage, and the employer must determine reasonableness against the criterion of whether it is effective, whether it is practical, what it costs, the resources of the organisation and the availability of financial support for the adjustment. These are all factors the employer will consider.

For detailed and practical advice about reasonable adjustments, and how your union can support you in making sure you are given the adjustments you are entitled to, visit the following links:

■ EHRC Guidelines

www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/the-duty-to-make-reasonable-adjustments-for-disabled-people

■ DirectGov

www.direct.gov.uk/en/disabledpeople/employmentsupport/your-employment-rights/DG_4001071

■ TUC Disability and Work guide

www.tuc.org.uk/extras/disabilityandwork.pdf

Redundancy

You may worry that disclosure could put you at risk of being prioritised for

redundancy. Under the Equality Act, an employer cannot select you for redundancy just because you have a disability, and the criteria used to select people for redundancy must not put disabled people at a disadvantage. The employer must make reasonable adjustments to any criteria used to select employees for redundancies. For example, it could be a reasonable adjustment for the employer to discount the amount of disability-related sickness absence an individual has taken when using attendance as a basis for selection³.

Sickness and disability absence

If your disability causes you to take time off from work, and you have not yet disclosed your disability, you may have to take that time as annual leave or sick leave. In a recent Equality Challenge Unit report on disability equality in HE, concerns were raised about absences due to disability counting as sickness absence and triggering unwanted outcomes such as a referral to an occupational therapist which may be disproportionate to your disability, or repercussions under points-based systems.

Sick leave and disability leave should be separate and distinct things. The law is not strong enough on forcing defined boundaries on this issue, but whatever protection and guidelines there are remain dependent on disclosure and openness. The argument rests upon it being a reasonable adjustment to count disability-related absence separately from sickness absence, and to adopt a disability leave policy. Equality and Human Rights Commission guidance gives as an example of a reasonable adjustment:

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

...and...

“Allowing a disabled worker to take a period of disability leave. For example: a worker who has cancer needs to undergo treatment and rehabilitation. Their employer allows a period of disability leave and permits them to return to their job at the end of the period.”

Making both your employer and your union aware of a disability gives you a starting point on which to argue for your institution's own fair policy on disability leave. The free TUC guide, *Disability and Work: a trade union guide to the law and good practice*, contains good advice on how you and your union can argue for a fairer disability policy; download it from www.tuc.org.uk/publications/viewPublication?frmPubID=616. And UCU has produced a union approved model policy on disability absence in FE that can be downloaded from www.ucu.org.uk/media/docs/g/n/feeng_disequal_nov09.

Who should I disclose to?

Once you have decided that disclosing a disability is the right decision, you should think about who to disclose to. Everybody has different working or personal relationships with colleagues, managers or departments, and may feel different levels of confidence in liaising with each. But it is important to ensure that the appropriate people are kept fully informed of your disability and your requirements, so that you are not discriminated against.

It may be assumed that once you have disclosed to your institution's human resources department, a file will then keep on record all of your details. But this is not necessarily the case, and information may be shared to different levels of efficiency within any organisation. Similarly, managers may not tell HR. If you feel you have a good working relationship and openness about your disability with your manager but are nervous about HR knowing, think about what would happen if that manager was not there any more, or circumstances changed.

There should always be appropriate opportunities to approach managers in a confidential environment, in your regular meetings or one-to-ones. Bear in mind that although it is important to be honest about your disability when responding to monitoring, this information should be confidentially and anonymously kept as statistical information, and does not represent a disclosure to management. The issue of monitoring is examined more closely on page 6.

This example was sent to us by a UCU member:

"My deafness started to make things difficult in the 1980s. In the early 90s it was getting very difficult to hear questions from students in large groups, and staff meetings were very difficult. I was fortunate that my then Head of Department agreed that my lecturing classes could be limited to about 25. That made things acceptable. However there was a change in HofD and I was assigned to teach classes of more than 50 students on a temporary

basis. I stuck this for two years and then, as I was becoming increasingly stressed, I asked to be excused teaching large classes again. At this point, the HofD consulted the Human Resources manager who said that there was nothing in my record about the agreement that my previous H of D had made, who had retired by this time. The Human Resources lot asked for a report from my GP and there was a delay. In the meantime I wrote to the previous HofD, who confirmed the previous agreement. Eventually it was decided that the previous arrangement was reasonable in view of my difficulties with hearing. The whole episode was very stressful and it could have been avoided."

You may have a disability that requires a reasonable adjustment, which you have disclosed to your manager and to your HR department. If you then apply for an internal promotion within another department, do not assume that they are aware of your disability or requirements. There should be an appropriate point to raise this issue.

Under the Equality Act an employer is obliged to ask at the point that they offer an interview if there are any reasonable adjustments required for the interview itself. More information about disclosing when applying for a job is covered in the next section.

Always think about who owns, and what is done with your disclosure once you have committed to it. Ask to be told exactly who will be made aware, why they are being made aware, and where the information will be kept.

Disclosing a disability when applying for a job

At application stage Under the Equality Act 2010 employers should not ask health-related questions before making a job offer. This includes questions relating to previous sickness absence.

There are some exceptions to this. An employer is permitted to ask about disability if certain tasks are fundamental

to the job in question, and may be difficult for those with a particular disability. This could include manual tasks such as moving heavy equipment. Employers may also ask if having a disability is a necessary requirement for a candidate applying for a job, for example for a job that involves testing specialist equipment designed to assist those with access issues.

think is not allowed under the Equality Act 2010, do raise it with HR. Or you can tell the Equality and Human Rights Commission (EHRC)—see www.equalityhumanrights.com/aboutus/contactus for contact details—which can then carry out an investigation or take other appropriate action⁴.

For detailed government advice on what you may be asked and obliged to answer at application stage, visit www.direct.gov.uk/en/disabledpeople/employmentsupport/lookingfor-work/DG_4000219.

At job offer stage Knowing that you have a job offer may give you the confidence to choose this as the right moment to disclose a disability, and discuss any reasonable adjustments that you may need. There should not be a problem with this, and employers are bound to consider providing such adjustments according to the criteria already discussed above.

Once in post If you wait until this stage before disclosing and you subsequently suffer discrimination you may not have a legal case as the employer can rightly claim that they did not know about your disability.

When deciding whether to disclose a disability to a potential employer you must weigh up all these factors. The law aims to protect a person with a disability from being discriminated against in the selection process. At the same time it aims to protect and provide reasonable assistance to those who choose to disclose.

Two ticks scheme

When applying for a position, look out for this symbol. You will see it displayed on

“If I had to tell them straight away I wouldn’t. I want the chance to prove myself. Give me an interview, and then we can talk.”

—UCU member

to the job in question, and may be difficult for those with a particular disability. This could include manual tasks such as moving heavy equipment. Employers may also ask if having a disability is a necessary requirement for a candidate applying for a job, for example for a job that involves testing specialist equipment designed to assist those with access issues.

The employer is also permitted to ask if the candidate is able to fully take part in all aspects of the recruitment process, or may require reasonable adjustments to carry out interview processes. Remember that they are obliged to consider making these reasonable adjustments should you request them.

The employer may also ask as part of diversity monitoring. This information should always be kept separate from any recruitment criteria. Monitoring is an important source of information in the fight to defend equality, and answering such requests openly should not count against you in the recruitment process (see *Monitoring*, on page 6). However, should you still feel that you would rather not disclose your disability at this time because of a fear of discrimination or any other reason, there should be other opportunities to disclose (anonymously or otherwise) once you are in post.

If you’re asked a question that you



job adverts and application forms. If an employer displays this symbol it means they are signed up to be positive about disabled people, and to be awarded it means they have certain legal obligations. They are obliged to interview all disabled applicants who meet the minimum criteria for a vacancy. Disclosure of a disability in this case would, assuming you met the minimum criteria, guarantee a chance to discuss your suitability for a job with an employer face-to-face.

Subscribers to the Two Ticks scheme also have certain obligations to current employees, such as raising awareness of disability issues and making every effort when employees become disabled to make sure they stay in employment.

You can learn more about the two ticks scheme at www.direct.gov.uk/en/DisabledPeople/Employmentsupport/LookingForWork/DG_4000314.

Although being a Two Ticks employer is a positive signal for disabled staff, often the positive intentions are not communicated or embedded into the whole organisation, and less than positive experiences can occur for disabled members. If your employer has signed up, ask through your union branch:

- how the employer monitors itself against the scheme,
- whether they advertise in, for example, the disabled people's press to ensure disabled people come forward for interview, or
- how often they review progress across departments.

Being part of the scheme means being pro active on achieving real practical outcomes for disabled workers in the workplace.

Regular and effective monitoring of the levels and the nature of disability among the workforce is extremely important in collecting the evidence needed to drive the fight for equality.

A Labour Force Survey in May 2009 revealed that people with a disability made up 18% of the working population, but that just 50% of them are in employment compared to 80% of those without a disability⁵. This sort of evidence is impossible to gather and use without regular monitoring and open responses.

The Equality Challenge Unit (ECU) has produced a guide outlining practical advice for higher education institutions on encouraging and enabling staff to disclose equality-related data, with information on using the data to promote equality and diversity within their institution. You can download the guide for free from www.ecu.ac.uk/publications/developing-staff-disclosure.

For an example of the way that data is collected and used you can download the ECU's report *Equality in higher education: statistical report 2010* from www.ecu.ac.uk/publications/equality-in-he-stats-10.

Monitoring to gather data should be anonymous and confidential. No individual should be identifiable from the responses. If the data is not anonymous, then the protections afforded by the Data Protection Act must be respected⁶. As well as anonymous data gathering there should also be regular opportunities offered to staff to update and amend their disability status in records held by the employer, should they wish to.

Public Sector Equality Duty

Public authorities have to demonstrate compliance with the duty by publishing

information no later than 31 January 2012, and at intervals of no more than a year. The information must cover employees if there are more than 150 employees. This will provide a basis for understanding what the effect of policies, practices and decisions have on different groups. It will help identify what steps need to be taken to advance equality of foster good relations. The information is to support the development of equality objectives and provide the basis for monitoring and reviewing of the objectives. Information should cover:

- race, disability, gender, age breakdown and distribution of the workforce (grade, job type, contract type, full time or part time, occupation)
- indication of likely representation on sexual orientation and religion or belief provided that no individual can be identified as a result
- an indication of any issues for transsexual staff, based on consultation
- gender pay gap information.

Other information should include:

- success rate of job applicants
- take up of training opportunities
- applications for promotion and success rates
- applications for flexible working and success rates
- return to work rates after maternity leave
- numbers taking maternity, paternity and adoption leave
- grievance and dismissal
- other reasons for termination of employment such as redundancy and retirement

- length of service/time on pay grade
- pay gap information for other protected groups
- reported incidents of hate crime
- application and selection for submission to the REF (HE).

Your employer should cover all protected characteristics and can use the following ways to collect the information:

- national statistics
- staff satisfaction surveys
- HR records
- equal opportunities monitoring forms
- evidence of involvement, engagement and consultation
- equality impact assessments.

Sensitive information

If you work somewhere where employees are reluctant to disclose, your employer will not be able to properly analyse equality issues in your workplace. So it is important to ask:

- why the information is being collected
- what it will be used for
- how privacy will be protected.

Answers to these questions may encourage disclosure.

For further information on the duty please look at UCU's Public Sector Equality Duty toolkit toolkit at www.ucu.org.uk/media/pdf/i/3/UCU_Equality_duty_toolkit.pdf.

Developing a culture and environment of disclosure

Regardless of legal obligations and legislation, being part of a culture where people feel able to disclose is a major influence upon the decision to do so. When asked "What would make you feel more confident about disclosing?", UCU members said that seeing others come forward and progress were the most important factors apart from legislation. If you come forward it is more likely that others will follow.

Employers and individuals alike play a role in shaping this culture. Employers should be aware that in doing so they create a happier and more efficient workforce. It is more cost-effective in the long term to plan adjustments than to correct unpredicted mistakes⁷.

There are some useful resources around this issue available. In 2008 the Commission for Disabled Staff in Lifelong Learning produced a report called *From Compliance to Culture Change: Disabled staff working in lifelong learning*. The Commission was an independent body funded by NIACE, DIUS, the LSC, LLUK and City & Guilds, and had membership and input from UCU staff and members. The report identified systemic failure to address the issue of current and future disabled staff seriously, leading to widespread institutional discrimination. It explains authoritatively and in depth why this should be so and identifies the main issues that need to be addressed to change this situation. Although the Commission is now defunct, UCU has a copy of the final report available for download from www.ucu.org.uk/media/pdf/6/g/From_Compliance_to_Culture_Change.pdf. UCU will continue to press FE institutions to act on the recommendations.

You can find links to the summary and further information about the Commission at www.niace.org.uk/current-work/the-commission-for-disabled-staff-in-lifelong-learning.

The Equality Challenge Unit has recently published a report called *Enabling Equality: furthering equality for staff in higher education* which investigates these issues. It makes recommendations on the way that higher education institutions can provide an environment that is inclusive and supportive of disabled staff, and highlights concerns and feedback from disabled staff. You can download the publication for free from www.ecu.ac.uk/publications/enabling-equality-staff.

Gains that benefit everybody are so often driven by those prepared to speak out and demand change. Working environments that have been adapted to the requirements of disabled people have vastly improved working conditions in almost every area over the last thirty years.

If you have chosen to disclose, it may well be your responsibility to educate and make the employer aware of the full implications of how this will affect your daily work. Without your input and education, the employer may assume a false picture of what your disability means based on lack of experience or any other preconception. You may wish to equip your employer with a new vocabulary around your disability, or specify language you prefer to be used by colleagues in relation to it.

The type of disability you have may affect your decision to disclose. If you suffer from a disability that carries no

"What is beneficial for disabled people is beneficial for everyone."

—UCU member

physical signs you may feel less confident about disclosing. Research has shown that those with a mental health disability are less likely to disclose, particularly in academic jobs, where it is feared that the impairment may be seen as an inability to carry out the job effectively. UCU has produced a guide to mental health issues in the workplace that is a useful resource in informing and equipping both employers and employees. It can be downloaded from www.ucu.org.uk/media/pdf/r/q/ucu_1in4_mentalhealthatwork_jun11.pdf.

You can join the UCU Disabled Members' e-network by contacting eqadmin@ucu.org.uk to receive regular updates on the work UCU is doing for our disabled members. You will also receive our newsletter for disabled members, published around four times a year.

If you have a problem and need your union's help, your first step should always be to contact your workplace branch/local association (LA). If you don't know how to contact any local UCU representative contact your regional office: www.ucu.org.uk/index.cfm?articleid=2057.

The local contact finder (www.ucu.org.uk/index.cfm?articleid=3771) will tell you the relevant regional office for your institution.

Some UCU branches/local associations (LAs) have equality officers who can assist you if you have any concerns relating to a work-related disability issue. To find out if there is an equality officer at your branch and how to contact them ask your departmental rep or branch/LA secretary/president.

For more information on getting support, visit the UCU website: www.ucu.org.uk/index.cfm?articleid=1945.

- 1 Radar report, *Doing Seniority Differently*
www.radar.org.uk/downloadPublication.php?id=2316&file=DSD-final-report-Exec-summary-low-res.pdf
- 2 www.dlf.org.uk/content/key-facts
- 3 www.direct.gov.uk/en/DisabledPeople/Employmentsupport/YourEmploymentRights/DG_4001071
- 4 www.direct.gov.uk
- 5 Employers' Forum on Disability
www.efd.org.uk/media-centre/facts-and-figures/disability-in-uk
- 6 TUC *Disability and Work, a Trade Union Guide to Good Practice 2011*
- 7 ECU *Enabling equality, furthering disability equality for staff in higher education*

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