

The local Government Association welcomes the government's decision to include fire fighters in the provisions of the Disability Discrimination Act. The Fire and Rescue Service is committed to providing equal opportunities in the workplace, this guidance will aid employers, employees and potential applicants of the fire service in ensuring the requirements of Act are properly and legally implemented.



Local Government Association

The Office of the Deputy Prime Minister welcomes the production of this guidance which will help Fire Services to meet their obligations as employers in accordance with the provisions of the Disability Discrimination Act.

Office of the Deputy Prime Minister

Preface

This guidance is intended to provide information and advice to Fire and Rescue Services in England, Wales, Scotland and Northern Ireland on the implementation of Part 2 the Disability Discrimination Act (DDA) 1995 as it applies to firefighters conditioned to the wholetime and retained duty systems. It is not intended to provide Fire Service Managers with clear cut legal advice. Instead it provides them with information and examples to enable them to exercise good and effective judgement. Each section is preceded by a list of bullet points and key messages for ease of navigation and reference.

In many cases Fire and Rescue Services will have policies on the areas included in this guidance. The purpose of including them is so that Services can review their policies in tandem with this guidance and the DRC's Statutory Code of Practice on Employment and Occupation to ensure that they enable the Service to fully meet its duties under the DDA. Also, although this guidance is written about firefighters, many of the principles about effectively meeting the DDA duties, can be applied to all staff.

This guide has been written by the Disability Rights Commission (DRC) and the Chief Fire Officers' Association (CFOA) and other key partners. Acknowledgement should also be made to those disabled firefighters whose experiences and comments have been reflected in this document.

It is intended to be used alongside policy guidance produced by the Office of the Deputy Prime Minister, for example, the Fire Service National Framework, and the Medical and Occupational Evidence for Recruitment and Retention within the Fire Service. The guidance outlines what the DDA requires Services to do and gives lots of practical examples. It also uses examples of cases already brought by the DRC. All the DRC's legal cases can be viewed on it's website www.drc-gb.org.

NB. Any reference to 'Fire Service' in this document also includes Fire and Rescue Services, Fire Authorities and any other body providing Fire and Rescue Services

This document has been produced for the internal use of fire service managers and advisers. We have, therefore, made the assumption that English would be used. However, should any person require the document in another language or audio, please contact the DRC.

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'Top Ten' Checklist on the DDA and Firefighters

The Fire Service:

1. Must not directly discriminate against a disabled job applicant or employee because of their disability. Direct discrimination cannot be justified.
2. Must make reasonable adjustments for job applicants or employees. Failure to make reasonable adjustments cannot be justified.
3. Must not subject a disabled job applicant or employee to disability-related discrimination.
4. Must not subject disabled employees to harassment or victimisation because of their disability.
5. Must develop an inclusive culture in which disabled firefighters are treated fairly.
6. Should never make decisions about a person's capability based purely on medical evidence. Disabled firefighters must be treated as individuals and reasonable adjustments must be made.
7. Ensure that managers must work with occupational health and medical advisers to reach decisions about making adjustments, redeploying or dismissing a disabled employee.
8. Must ensure that ALL staff have an understanding of the basic requirements of the DDA.
9. Must ensure that managers should make decisions WITH disabled employees not ABOUT them.
10. Must adopt a 'can do' creative approach to managing disability.

Section 1 Changing Culture in the Fire and Rescue Service

MAIN POINTS:

- The Fire Service is modernising rapidly and responding to the equality agenda. Equality for disabled firefighters is a key part of that response. • Commitment to achieving cultural change must come from Chief Fire Officers/Firemasters.
- A well structured and well targeted training programme must be implemented for ALL staff (operational and non-operational) as part of the change process.

Background - The Equality Challenge

The Fire Service is committed to providing equal opportunities in the workplace. It is also committed to increasing diversity in the workforce and to providing services which meet the requirements of different groups of people within the community. Chapter 5 of the National Framework Document reaffirms the Office of the Deputy Prime Minister's (ODPM's) and the Fire Service's commitment to equality and diversity.

The ODPM takes the view that the introduction of flexible work practices, improving opportunities for people from underrepresented groups and operating best practice in recruitment, promotions, disciplinary procedures, sickness and ill health retirement procedures are key elements of a modern Fire Service. In addition, Annex E of the National Framework enshrines the core values of the modern Fire and Rescue Service, including valuing its people.

Furthermore the Audit Commission via the Comprehensive Performance Assessment (CPA) and in Wales the Wales Programme for Improvement (WPI) process will be scrutinising the services' performance in this area. Auditors will seek evidence of compliance with statutory codes on tackling discrimination, progress against the non-statutory equality standard for local government and of the delivery of results and improvements.

In addition, the implementation of the IPDS (Integrated Personal Development System) and the notion of equalities as an essential competence/skill focuses the Service's attention on the behavioural standards it expects with regard to leadership, management and personal conduct.

Finally, legislation will come into force within a few years, introducing a new duty to promote disability equality similar to the race equality duty introduced through the Race Relations (Amendment) Act 2000.

The combined effect of these legal obligations and organisational changes will present the Fire and Rescue Service with a significant challenge, and one that it must succeed in meeting.

The Nature of the Challenge

The key cultural issues which need to be addressed are:

- **Limited understanding of the statutory definition of disability as defined in the DDA and who disabled people are.**
- **Limited understanding of the barriers disabled people face, which, if removed, would allow increased participation in work and other aspects of life.**
- **Perception that including disabled firefighters would lower standards;**
- **Perception that including disabled firefighters could place a burden on other team members;**
- **Lack of trust from disabled firefighters who believe that when they develop or declare a disability or long term health condition, they will be treated unfairly;**
- **Unwillingness from disabled firefighters to identify themselves as such because of a fear of colleagues' reactions**

There are over 10 million disabled adults in Great Britain, and most people acquire a disability or health condition during their working lives. Thus it is vital that the Service challenges these perceptions and creates a culture in which disabled people can take a full and equal part. For further 'disability facts' see Appendix 2.

How can we change culture effectively?

Changing the culture of an organisation is not something that happens overnight. It can cover many issues and efforts can be diluted if not targeted properly. Key elements of a change strategy include:

- Commitment at senior management level
- Action to improve understanding
- Requiring and rewarding behavioural changes
- Clear change management strategy, benchmarking process and effective evaluation mechanisms

The nature of the change that should be aimed for is a move from a culture of avoidance to one of engagement and shared problem solving. For further reading on cultural issues in the Fire Service see Baigent D www.fitting-in.com/baigent.pdf.

Training

Training is one of the key interventions that the Fire and Rescue Service can utilise to achieve cultural change. However, before 'identifying training' for firefighters, a Fire Service needs to define what the training needs are. There could be three training needs:

- a. The need to build the capability and skill set of managers to take responsibility for engaging with and managing disabled firefighters and meeting the Service's duties under the Disability Discrimination Act
- b. The need to promote knowledge and understanding of relevant policies to all firefighters by various means
- c. The need to raise awareness of the barriers disabled applicants and employees may face and how to tackle them.

Different types of training can meet these training needs. These types of training are:

Disability Awareness Training

The aim of this training is to increase people's confidence in working with and serving disabled people. It can include 'disability etiquette' for example, how to help a blind/visually impaired person get around if they require it. It can also explore some of the attitudinal barriers that disabled people face in society.

This sort of training doesn't usually focus much on legal requirements. It is an introduction to some general issues.

Disability Equality Training

This training explores the barriers disabled people face and how to tackle them. Again, it may not focus specifically on legal requirements. Many disabled people (and disability equality trainers who are often disabled people themselves) feel that the DDA does not go far enough in addressing the issues that disabled people have to deal with. Therefore, the aim of this sort of training is to look more at what can be done and what should be done rather than looking at 'legal compliance'. It can be helpful, however, in focusing on a best practice approach to disability.

DDA Training

This type of training will inform participants about the requirements of the DDA and what their duties are as an employer, employee or service provider.

Workshop plans for cultural change

Fire Services will obviously be developing plans to train all their staff on the requirements of the DDA and also to develop their general awareness of disability equality issues. However, the DRC and CFOA suggest that this is what a model session might look like.

1. Training Content

a. First Section - Background

Start with some basic facts about disabled people and their involvement in the labour market. Specific disability organisations can provide more in-depth data on certain types of impairment (see contacts list in Section 12). The trainer could then do a number of things:

- Show the DRC's 'Talk' video, which challenges some common perceptions about disability and disabled people. The trainer could then ask people to discuss how the video made them feel and what issues it raised.
- Ask a disabled firefighter to talk about their experiences. They may be reluctant to do this, but it is a very powerful way of getting the message across that having a disability does not automatically mean that they can't do the job. It might be appropriate to ask someone from another Service, so that firefighters don't feel pressured to talk about difficulties they may have encountered in their current service.
- There are other materials available which Services can use to 'get the basics' across. The Employers' Forum on Disability has produced a number of very useful publications on this matter (see Section 12).

b. Second Section - Legal Position

Set out the basics of the DDA as it applies to firefighters. Concentrate on examining types of discrimination and making reasonable adjustments.

c. Third Section - Practical Implications

Discuss some 'what if' scenarios. There are many of these contained in this guidance document and they are a good way of getting people to understand the issues in practice. Encourage firefighters to talk about their worries and concerns and try to address these, this will ensure that they take the issues on board.

d. Fourth Section - Service Delivery

This section could include looking at the Part 3 duties on service delivery. It is worth bearing in mind that a far more proactive public sector duty to promote disability equality is likely to be introduced by December 2006. For further information on these issues, please see the DRC's website.

e. Fifth Section - Personal Responsibility

This section should include some action planning, either on an individual basis as a means to work towards IPDS competencies, or as a collective exercise to devise a list of things that the watch/crew or whole Fire and Rescue Service should do.

2. Training Delivery

The above workshop session (whether it is done in an hour or over a half or even a full day) could be delivered in a number of ways.

a. The Service HR/training team could deliver the package entirely in-house. Those staff must have had disability awareness training and training on the DDA as it applies to firefighters. The DRC's 'Talk' video (mentioned above) is available from the DRC's Helpline (see Section 12).

b. The training could be done by HR/training personnel, in conjunction with an 'expert' from outside (usually a person who trains on disability equality issues). The DRC's Good Practice Training Directory contains a list of people who can provide this kind of training (see Section 12). The Service will need to ensure that any training procured from an outside provider is fit for purpose (i.e. the person understands how the DDA applies to firefighters and can ensure that their own training delivery method is equitable and accessible).

c. The training could be provided entirely by an outside provider. The issues to bear in mind are outlined above. The DRC does not provide training itself but there are many organisations that do.

For more information on training providers, see Section 12.

3. Attendance

Fire Services should opt for mandatory attendance. If attendance was linked to the achievement of IPDS competencies on equality issues, then the usefulness of the training to firefighters might be more obvious. Alternatively, the Service could make attendance voluntary. There are risks associated with this, in that the Fire Service is responsible for the conduct of its employees

and must do everything in its power to ensure that it does not discriminate against disabled people. A phased mandatory training strategy is probably the most appropriate.

After the initial training phase is over, training on DDA issues and disability equality can be woven into more general diversity training and fairness at work training.

Section 2 Explanation of the DDA as it applies to firefighters

MAIN POINTS:

- Fire Services must understand and apply the DDA definition of disability.
- Fire Services must not directly discriminate against disabled job applicants, disabled employees or disabled ex-employees. This cannot be justified.
- Fire Services must make reasonable adjustments for disabled job applicants or employees. Failure to do so cannot be justified.
- Fire Services must not practice disability-related discrimination without justification.
- Fire Services must not subject disabled employees to harassment or victimisation.

The DDA - Brief Overview

The Disability Discrimination Act was passed as an Act of Parliament in 1995. The first provisions of the Act came into force in 1996, and since then the Act has been amended to reflect European legislation and the general need to provide increased civil rights for disabled people. The DDA is divided into eight parts. The most important of these are:

1. Part 1 - Definition of Disability
2. Part 2 - Employment Provisions
3. Part 3 - Provision of Goods, Facilities and Services (including property letting and buying)
4. Part 4 - Education - amended by the Special Educational Needs and Disability Act.
5. Part 5 - Transport

The Definition of Disability

The DDA gives protection from discrimination to anyone who is a "disabled person" as defined by the Act. A disabled person is someone who has a physical or mental impairment which has an effect on his or her ability to carry out normal day-to-day activities. That effect must be:

- substantial (that is, more than minor or trivial), and
- adverse, and
- long-term (that is, it has lasted or is likely to last for at least a year or for the rest of the life of the person affected).

Physical or mental impairment includes sensory impairment. Hidden impairments are also covered (for example, mental health problems, learning disabilities, dyslexia, diabetes and epilepsy).

People who have had a disability in the past are protected from discrimination even if they no longer have the disability. For example, a person who experienced depression for two years but has since recovered could be covered by the DDA if, at some point in the past, their condition fitted the definition contained in the Act.

People who have progressive conditions like HIV, multiple sclerosis, some types of cancer, motor neurone disease, Parkinson's disease and arthritis are also covered by the Act, but only when they can demonstrate that their condition meets the requirements set out in the DDA . A person with a progressive condition is not covered by the DDA from the point of diagnosis, but from the point at which it has some impact on their ability to carry out normal day-to-day activities. However, the government intends to change the law, so that some types of progressive condition, such as HIV and Multiple Sclerosis, will be covered by the DDA from the point of diagnosis.

If a person uses medication, mobility aids or another type of equipment to manage the effects of their disability, the effect that the person's condition has without treatment or aids should be considered. For example, a person who uses insulin to control diabetes is a disabled person because without this medication their diabetes would have a substantial adverse effect. Similarly, a person who uses a walking stick or wears a prosthetic limb would be considered disabled if, without these items, their daily lives would be substantially affected by their condition.

For more detailed information on the definition of disability, please refer to Appendix B of the DRC's Statutory Code of Practice on Employment and Occupation.

Explanation of types of discrimination:

The following explanations are taken from the DRC's Statutory Code of Practice on Employment and Occupation. This section is designed to give Fire Services the best guidance, in legal terms, of the basic provisions of the Act. Further explanation can be obtained by referring to the Code of Practice itself.

- **Direct discrimination**

The law says that a Fire Service's treatment of a disabled person amounts to direct discrimination if:

- it is on the ground of their disability
- the treatment is less favourable than the way in which a person not having that particular disability is (or would be) treated, and
- the relevant circumstances, including the abilities, of the person with whom the comparison is made are the same as, or not materially different from, those of the disabled person.

It follows that direct discrimination depends on the Fire Service's treatment of a disabled person being on the grounds of their disability. It also depends on a comparison of that treatment with the way in which the Fire Service treats (or would treat) another relevant person. If, on the ground of their disability, the disabled person is treated less favourably than another relevant person is (or would be) treated, the treatment amounts to direct discrimination. Direct discrimination cannot be justified.

EXAMPLE:

A Fire Service is selecting candidates to appoint as firefighters. There are a number of candidates who have similar levels of performance in the point of entry selection tests. However, one of these candidates has epilepsy and the Fire Service decides not to employ that person because an assumption is made that it would be too much of a risk to employ someone with epilepsy as a firefighter.

This is likely to amount to direct discrimination because the Fire Service is making the decision not to recruit based (solely) upon the person's disability, and is making assumptions about them that they would not make about a non disabled person.

• failing to make reasonable adjustments

Under the DDA, the Fire Service as an employer has a duty to make reasonable adjustments for job applicants and for disabled firefighters to enable them to effectively execute their current role or progress through the service.

Put simply, the DDA does not permit the Fire Service to justify a failure to comply with the duty to make reasonable adjustments. Section 3 of this document has further details about reasonable adjustments.

EXAMPLE:

A firefighter has dyslexia and asks the Fire and Rescue Service for some training and support to enable them to complete reports and other written information correctly. There is a wide range of software that can help people with dyslexia. There is also training available to help people to manage this type of disability. Help towards the costs and arrangements for this training could be obtained through the local job centre disability employment adviser and the Access to Work scheme. This adjustment is likely to be seen as reasonable and the Fire and Rescue Service would then have a duty to make it.

- **Disability-related discrimination**

Disability-related discrimination occurs when the reason for the discrimination relates to the person's disability. Often, this can occur when a general policy or practice used in a Fire Service ends up having a discriminatory effect upon a disabled job applicant, employee or ex-employee.

In determining whether disability-related discrimination has occurred, the Fire Service's treatment of the disabled person must be compared with that of a person to whom the disability-related reason does not apply.

EXAMPLE:

A disabled firefighter is dismissed for taking regular periods of sick leave that are disability-related. The Fire Service's policy, which has been applied equally to all staff (whether disabled or not) is to dismiss all employees who have taken this amount of sick leave. The disability-related reason for the less favourable treatment of the disabled person is the fact of having taken regular periods of sick leave. The correct comparator is a person to whom that reason does not apply - that is, someone who has not taken this amount of sick leave. Unless the Fire Service can show that the treatment is justified, it will amount to disability-related discrimination because the comparator would not have been dismissed. However, the reason for the treatment is not the disability itself (it is something related to it, namely the amount of sick leave taken) so there is no direct discrimination.

- **Harassment**

The Act says that harassment occurs where, for a reason which relates to a person's disability, another person engages in unwanted conduct which has the purpose or effect of:

- violating the disabled person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for him.

If the conduct in question had the intention of creating either of these effects, then it amounts to harassment irrespective of its actual effect on the disabled person. In the absence of such an intention, however, the conduct will only amount to harassment if it could reasonably be considered as having either of these effects. Regard must be had to all the circumstances in order to determine whether this is the case. Those circumstances include, in particular, the perception of the disabled person.

EXAMPLE:

A firefighter with HIV uses a colleague's mug. The colleague then makes a point of being seen washing the mug with bleach, which is not something they would do if anyone else used their mug. The firefighter also makes offensive comments about having their mug used by someone with HIV. This is likely to amount to harassment.

- **Victimisation**

Victimisation is a special form of discrimination. The concept of victimisation should not be confused with the ordinary meaning of this term in everyday language; it has a different and more specific meaning under the DDA. The Act makes it unlawful for one person to treat another ('the victim') less favourably than they treat or would treat other people in the same circumstances because the victim has in good faith:

- brought, or given evidence or information in connection with, proceedings under the Act (whether or not proceedings are later withdrawn), or
- done anything else under or by reference to the Act, or
- alleged someone has contravened the Act (whether or not the allegation is later dropped).

It would also be victimisation if the person believed or suspected that the victim had done or intended to do any of these things. This provision in the Act is the only time when a non-disabled person can claim under the DDA.

EXAMPLE:

A disabled firefighter takes their Fire Service to tribunal, claiming disability discrimination because they believe they have been discriminated against. The firefighter seeks the support of a colleague, who knows about the case. The colleague attends the tribunal hearing and gives evidence in good faith in support of the disabled firefighter's case. After the tribunal hearing, the Fire Service brands the colleague 'a troublemaker' and tries to undermine them because they gave evidence against the Service at the tribunal hearing. This is likely to amount to victimisation.

Section 3 Reasonable Adjustments in Employment

MAIN POINTS:

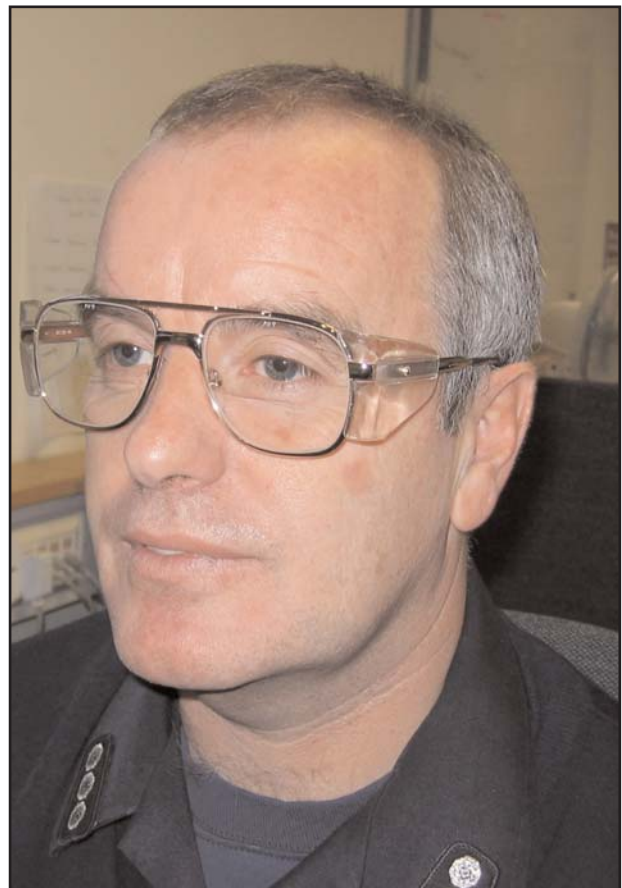
- Failure to make REASONABLE adjustments is unlawful.
- A clear and sensible policy on how to make reasonable adjustments must be developed and followed.
- Health and Safety issues must NOT be used as an automatic barrier to making reasonable adjustments.
- All decisions about reasonable adjustments must be fully documented and it is recommended that records are kept for a minimum of 2 years and in compliance with the Data Protection Act.
- For ease of use - refer to Flow Chart within this section.



Diabetes Kit



Prescription 'Glasses' Helmet Insert



Prescription Safety Glasses

What is a reasonable adjustment?

If an employer knows or should know that a job applicant, employee or ex-employee has a disability, there may be a duty to make reasonable adjustments for that person.

The duty to make reasonable adjustments arises where a provision, criterion or practice applied by or on behalf of the Fire Service, or any physical feature of premises occupied by the Fire Service, places a disabled person at a substantial disadvantage compared with people who are not disabled. Chapter 5 of the DRC's statutory Code of Practice on Employment and Occupation gives further information about the duty to make reasonable adjustments.

The Fire Service has to take such steps as is reasonable for it to have to take in all the circumstances to remove or minimise the disadvantage - in other words the Fire Service has to make a 'reasonable adjustment'. Where the duty arises, a failure to make a reasonable adjustment cannot be justified and is unlawful.

The Fire Service does not have to make an adjustment if:

- it can show that the adjustment was not a reasonable one to make, or
- it could not reasonably be expected to know that an adjustment was needed, (see DRC Code of Practice paragraph 5.12). In this case the Fire Service must not rely on the disabled person to 'come forward.' It must ensure that it has effective checks in every process to ensure that the opportunity to identify the need for reasonable adjustments is provided.

Reasonable adjustments can be any of the following;

- making adjustments to premises;
- allocating some of the disabled person's duties to another person;
- transferring the person to fill an existing vacancy;
- allowing the disabled person to be absent during working or training hours for rehabilitation, assessment or treatment;
- altering hours of working or training;
- assigning an employee to a different place of work or training;

- giving, or arranging for, training or mentoring (whether for the disabled person or any other person);
- conducting a proper assessment of what reasonable adjustments may be required;
- permitting flexible working;
- allowing a disabled employee to take a period of disability leave
- participating in supported employment schemes, such as Workstep
- employing a support worker to assist a disabled employee
- modifying disciplinary or grievance procedures
- adjusting redundancy selection criteria
- modifying performance-related pay arrangements.
- acquiring or modifying equipment

How does the Fire Service make reasonable adjustments?

The Fire Service is responsible for deciding what adjustments are reasonable and should be made. It is not the responsibility of the disabled person to do this. It is good practice for the Fire Service to involve the disabled person in the process of identifying possible adjustments. Sometimes a disabled person will make requests for adjustments and the Fire Service, as their employer or potential employer, must respond appropriately to any such requests. However, it is important for the Fire Service to be prepared to think for itself about what adjustments it could make so that a disabled job applicant or employee is not placed at a substantial disadvantage.

Remember that, especially at the onset of a disability or health condition firefighters may not be aware that they have rights under the DDA, or know about adjustments that could help them perform better or stay in work.

Below is a checklist of questions that the Fire Service can pose to help it decide about making adjustments.

1. How effective is the adjustment in preventing the disadvantage?

It is unlikely to be reasonable for the Fire Service to make an adjustment that wouldn't really solve the problem for the disabled firefighter. For example, a

firefighter who uses a hearing aid requests that the communications equipment in the appliance and portable equipment used on the fireground is made compatible with their hearing aid. Even if this were technically possible, the environment in which the firefighters are using this equipment is likely to be noisy anyway. However, the Fire Service would have a duty to look at what other adjustments it could make to enable the firefighter to use the equipment.

2. How practical is the adjustment?

The Fire Service must consider if an adjustment would be practical. For example, a firefighter with insulin dependent diabetes requests that a separate toilet cubicle be built to enable them to inject their insulin in private. This is likely to be expensive and unreasonable if the cubicle is requested for the firefighter's sole use. However, it may well be reasonable to provide the firefighter with a safe and hygienic small storage fridge on station, and a sharps disposal bin (neither items take up much space), and to train other staff to give the firefighter some privacy when they need to inject their insulin.

3. What are the financial and resource costs of making the adjustment?

Many adjustments don't cost anything at all, as they require a change in policy or a way of doing things. Some adjustments may incur a cost, for example a firefighter with dyslexia may need support or additional software to enable them to complete written reports. The Access to Work scheme (see Section 12) may provide an element of financial support to employers to make adjustments.

4. How much disruption to the Fire Service's overall business will the adjustment cause?

An adjustment which reduces the ability of the Fire Service to perform effectively is unlikely to be reasonable. For example, a firefighter might request that they only work daytime shifts between certain hours because of the effects of their medication for depression. This might be impractical for the Service, depending upon its size and resources. However, the Service would have a duty to look at making some adjustments to the firefighters shift patterns to help them manage their disability, rather than just assuming that it can't be done.

5. What is the extent of the Fire Service's overall resources?

The question of what is reasonable in law takes into account considerations of resources the Fire Service has at its disposal. For example, what might be reasonable for a big metropolitan Fire Service to do will differ from a Fire Service covering a rural area, because the latter may have less flexibility with

resources and personnel (for example firefighters conditioned to the Retained Duty System, where redeployment opportunities may be limited).

6. What help and advice is available to the Fire Service to help it make the adjustment?

The law does not expect the Fire Service to know everything about disability. There are support services that can be used. Obviously, Fire Service personnel may be able to provide advice, but the Service can also call upon disability and employment advisers based at the local job centre, or consult specialist disability organisations and charities such as those listed in Section 12.

7. What is the nature of the employer's business and what is the size of their undertaking?

The concept of reasonableness also takes into account the type of organisation the Fire Service is operating. The issues that the Fire Service must consider when making adjustments will be different to an employer who does not operate in such a risk critical environment (such as an office based employer). However, the Service should not seek to use this as an automatic 'get out clause' when considering adjustments.

8. What would the effect be on other employees of making the adjustment?

The purpose of making reasonable adjustments is to help individual disabled people to carry out their jobs. Some adjustments would impact on other staff. This is one factor that should be considered when deciding whether it is reasonable for a particular adjustment to be made. For example, a request to change shift patterns because of a disability may place an unacceptable burden on other firefighters (who may also have caring responsibilities for example). However, the Service should always seek to look at what might be possible. Some firefighters might view adjustments for one disabled firefighter as 'special and unfair treatment.' It is the duty of the Fire Service to change the culture of the organisation so that adjustments are viewed as a matter of equal rights available to those who need them rather than 'special' or 'paternalistic' treatment.

9. How much cooperation has the firefighter given to make an adjustment work in practice?

The Service may make many efforts to make adjustments, for example for a firefighter to return to work after a long period of absence due to a disability. However, if the firefighter does not attempt to cooperate with the Fire Service, there will be limited measures that the Service could reasonably be expected to undertake. The Service must consider why the person may not be cooperating.

For example, they may not trust line managers to treat them fairly, they may fear the attitudes of their colleagues, or there may be a dispute around medical diagnosis that is getting in the way of examining what reasonable adjustments could be made. The Fire Services must do everything in their power to ensure that they are meeting their duties and that the firefighter feels included and consulted in decisions about their job.

10. How much would it cost to recruit and train a replacement?

Lastly, when considering an adjustment, the Service should consider what the cost of replacing the firefighter might be. There will be costs associated with ill health retirement and further costs incurred in replacing the firefighter. The adjustments needed may actually incur far less work and cost than simply putting someone onto ill health retirement (for example, a firefighter who develops epilepsy). It would also mean the Fire Service does not lose the skills and experience of the disabled firefighter.

Health and Safety Considerations

Obviously, one of the key areas to consider when thinking about reasonable adjustments is what impact an adjustment would have on the health and safety of the firefighter, their colleagues and members of the public. Section 59 of the DDA allows for the provisions of the DDA to be overridden if another statutory provision unequivocally requires an organisation to act in a particular way - section 59 does not apply to the operation of discretionary powers or functions. It provides that nothing done "in pursuance of" another enactment or instrument will be unlawful under the DDA. This means that if health and safety legislation requires the Fire Service to act in a particular way, such action will not be unlawful under the DDA.

However, the Fire Service must not use unfounded arguments about health and safety issues as an excuse not to make adjustments.

If the Fire Service treats a disabled person less favourably on grounds of, or for a reason relating to their disability, or if it fails to make reasonable adjustments for them, and this is because of a health and safety issue, it will be necessary to show there was a genuine health and safety risk that could not be overcome by reasonable adjustments. It will be necessary for the Fire Service to be able to show that its decision about the health and safety issue in question was not based on prejudice, assumptions or blanket bans and that the reasons for the decision were material and substantial (i.e. relevant and of substance). In other words, the Fire Service will need to:

- **carefully consider what the potential health and safety issues are with regard to making an adjustment (including consultation with HR, medical advisers, operational managers and the firefighter)**
- **look at how these risks can be managed (again with the same group of people)**
- **if it is decided that there is an adjustment that could be made to manage the risk, the Service must make it.**

The Service may only refuse to make an adjustment if it can show that the adjustment was not reasonable because even after making it, the health and safety risk would still be unacceptably high.

Any decision about making adjustments must be fully documented.

EXAMPLE:

A good example of this issue is the implementation of the Physical Agents (Noise) Directive (2003/10/EC) which from September 2004 will require employers to monitor the hearing levels of people exposed to noise levels 85 db(A)/140 Pa. Of course the Fire Service will be one of the employers where this need to monitor will apply. However, there are two key considerations to bear in mind if a hearing loss is identified, and there are worries about the impact of this upon a firefighter's ability to do their job safely.

1. Any tests devised to test the possible effect of the hearing impairment on ability to do the job **MUST** be vocationally based, i.e. they must reflect situations and noises that the firefighter would really have to deal with.

2. If a hearing loss was identified, the Fire and Rescue Service **MUST** look at reasonable adjustments (for example, the purchase of hearing aids). It is likely to be unlawful to take a firefighter off operational duty if a hearing loss is identified, if the above two factors have not been given due consideration.

Risk Assessment

The consideration of any proposed adjustments should be subject to an appropriate risk assessment. The risk assessment must be based upon the disabled firefighter themselves, and not made using general assumptions about disabled people and working arrangements. The risk assessment must also be carried out by a person or persons who are suitably trained, including having an understanding of the duties under the employment provisions of the DDA (Part 2), and an understanding of disability in general. The DDA does not require the Fire Service to be liable for unacceptable levels of risk that a disabled firefighter's disability may pose in certain situations. However, in many cases discrimination takes place because a suitable and realistic assessment of risk has not been made.

Joint research undertaken by the Disability Rights Commission and the Health and Safety Executive found that risk assessments were inadequate for reasons including:

- Assessment carried out by new and inexperienced member of staff (Vaughan v Worthing & Sandilands NHS Trust)
- Reliance on generalised information and assumptions in place of an individualised risk assessment (Sheen v BIZ Engineering Ltd)
- Ignoring mechanisms developed by disabled person for coping with disability in the workplace (Roberts v ASD; Garret v Brotherwood Automobility Ltd)
- Failure to seek occupational health advice (Reeves v Radey Kemble Ltd)
- Misunderstanding or misreading of medical evidence (Owen v John Pimblett & Sons Ltd; Hipkiss v Joseph Ash & Son Ltd).

For further advice on disability and risk assessment please refer to the DRC's Statutory Code of Practice on Employment and Occupation sections 6.8 to 6.13.

EXAMPLE:

A firefighter declares that they have HIV. Their line manager says that they should not be allowed to take part in extrication duties at road traffic incidents because of the perceived risk of cross contamination to casualties which might result in litigation against the Service.

Firstly, the line manager has not explored what the risks might be, and has not explored whether any reasonable adjustments can be made to minimise the risk. In addition, the line manager should bear in mind that the Fire Service already has safe working practices for extrication to prevent infection transfer from casualties to firefighters, and thus this protection should work the other way around.

Using Access to Work

Access to Work is a government operated scheme to enable disabled people to gain and keep employment. Essentially, it provides funding for reasonable adjustments such as paying for equipment, training, support workers or paying costs relating to travel to work. It is not appropriate here to give an exact breakdown of what Access to Work can offer, Fire Services should contact Access to Work through their local jobcentre. There may be an employer contribution depending on the cost of the adjustment and the length of service of the firefighter concerned. When considering adjustments, in particular how costly they might be, the Fire and Rescue Service must consider what assistance would be available from the Access to Work scheme.

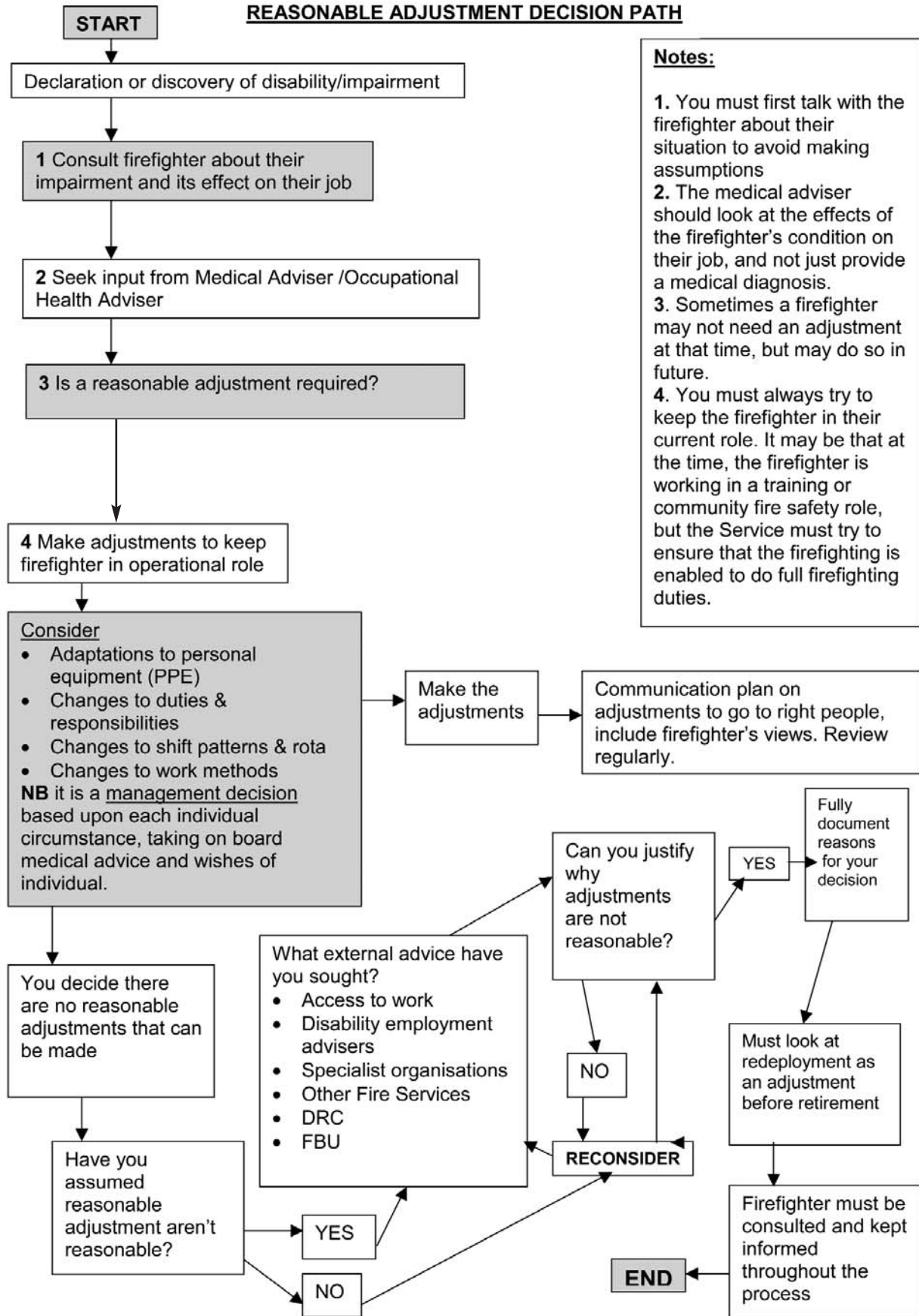
What happens if a Fire Service doesn't make reasonable adjustments?

If a Fire Service fails to make a reasonable adjustment it is acting unlawfully and the firefighter concerned would have the right to lodge a grievance to challenge this decision. Failure to make reasonable adjustments is not justifiable in law. In order to try and ensure that the Service does not discriminate, consider all options before making a decision about what the Service can and cannot provide. The Fire Service should fully document the decision making process to ensure that if the decision is challenged, there is a reliable audit trail.

Reasonable Adjustment Decision Making Flow Chart

This flow chart is designed to help people with line management responsibilities think through the process of making reasonable adjustments for firefighters. The flow chart commences from the point at which it is identified that a firefighter has an impairment or disability which may affect their ability to do their job. It is strongly advised that rather than getting bogged down into seeking a precise diagnosis as to whether the person is covered by the DDA or not, Fire Service managers and specialist advisers should look at the reasonable adjustment process. Even if the person may not, at a certain point technically fit the definition contained in the Act, if a good practice approach is not adopted their condition could rapidly become one that does fit the definition. In addition, proactive and positive management of this nature will create a much more open and equal working culture in the Service.

REASONABLE ADJUSTMENT DECISION PATH



Notes:

1. You must first talk with the firefighter about their situation to avoid making assumptions
2. The medical adviser should look at the effects of the firefighter's condition on their job, and not just provide a medical diagnosis.
3. Sometimes a firefighter may not need an adjustment at that time, but may do so in future.
4. You must always try to keep the firefighter in their current role. It may be that at the time, the firefighter is working in a training or community fire safety role, but the Service must try to ensure that the firefighting is enabled to do full firefighting duties.

Section 4 Recruitment

MAIN POINTS:

- Fire Services must not use discriminatory advertisements.
- Fire Services must make reasonable adjustments to all aspects of the recruitment procedure, including medical standards and the administration of point of entry tests.
- Fire Services must not choose whether or not to employ people based upon medical evidence alone, and without proper consideration of possible reasonable adjustments.
- Fire Services must not operate 'blanket bans' on employing people with certain disabilities or health conditions. Each case must be assessed on its individual merit.
- Fire Services must ensure that ALL staff involved in the recruitment process and understand the Service's duties under the DDA.



This section deals with the duties the Fire Service has to meet when it is recruiting new firefighters. The duties not to discriminate and to make reasonable adjustments apply from the point of advertising vacancies, right through to the actual appointment of new firefighters. Section 7 of the DRC's Statutory Code of Practice on Employment and Occupation sets out what the duties are in more detail.

Advertising Vacancies

The DDA (s16B(1)) says that, when advertising a job vacancy, it is unlawful for the person offering the job to publish an advertisement (or cause it to be published) which indicates, or might reasonably be understood to indicate:

- that the success of a person's application for the job may depend to any extent on their not having any disability, or any particular disability, or
- that the person determining the application is reluctant to make reasonable adjustments.

This applies to every form of advertisement or notice, whether to the public or not, for any employment, promotion or transfer of employment. However, an advertisement may still be lawful even if it does indicate that having a particular disability will adversely affect an applicant's prospects of success. This will be the case where, for example, because of the nature of the job in question, the employer is entitled to take the effects of the disability into account when assessing the suitability of applicants.

The DDA does not give individual job applicants the right to take legal action in respect of discriminatory advertisements. Such action can only be taken by the Disability Rights Commission.

In addition, it should be noted that the content of the advertisement could be taken into account by an employment tribunal in determining a claim brought by a disabled person under the DDA.

When advertising to recruit firefighters, the Fire Service is advised not to use statements like "must have excellent eyesight" or "must be physically fit." Although the Service is justified in requiring a certain level of ability in job applicants, these sort of statements can imply that the Service is not willing to make reasonable adjustments. It would be better to state that the Service "needs people who can demonstrate the necessary skills and experience to be a firefighter" and then ensure that in all advertisements the Service states its open commitment to meeting its duties under the DDA.

Recruitment Open Days/Positive Action

Fire Services may consider running 'open days' to encourage people to join the Service, especially to improve the diversity of the workforce. This is a good thing to do but they must be properly organised. Some points to remember are:

- a. Make sure that any firefighters or other staff who are likely to be talking to people on the day know about the DDA and the basic do's and don'ts. A firefighter who has not been given the right information may make a comment to a disabled person which is inappropriate. As they are acting on behalf of the Service, the Service must ensure they have sufficient information to do their job to the best of their abilities.
- b. If possible select an accessible venue for the open day. Obviously people who use wheelchairs or have other mobility impairments are not likely to be able to be firefighters but they may be accompanying a family member or friend, and the Service still has duties to ensure that it provides an accessible event.
- c. Consider having someone there on the day who has good knowledge of the DDA, and the Services' policies on disabled firefighters, so that disabled people can get the same information that non-disabled people get.

Point of Entry Selection Tests

New firefighter point of entry selection tests will be introduced to the Fire Service from Spring 2005, following a piloting and validation process. Prior to the introduction of the new national procedures Fire Services are responsible for ensuring that the entry test procedures they use do not discriminate on any grounds. In applying the tests Fire Services must ensure that they take full account of the provisions of the DDA. The key point to bear in mind is that even though the tests set a standard, managers are still required to apply some discretion with regard to making adjustments for disabled applicants.

The first step is to give the recruit the opportunity to identify whether they have a disability or health condition which may require the Fire Service to make reasonable adjustments. It is unlikely to be lawful to state that the tests are a set format and there is no room for change. The extent to which Services can make adjustments will be limited, because of the legitimate requirements of the job of a firefighter. The duty to make reasonable adjustments applies, however, and must be considered.

EXAMPLE:

The Service operates a test which requires a person to run and carry an object over a set distance in a set time, the Service may be placing a person with a mobility impairment at a substantial disadvantage. Obviously the job of a firefighter requires people to be able to carry objects over distances in quick time (when they are dealing with critical incidents on the fireground or at road traffic incidents for example). However, the person may have a slight mobility impairment which means that they complete the tests a couple of seconds slower than other people. There will obviously be an overall level of competence required throughout all the tests, but the following considerations should be made before a final decision on appointment is reached:

- a. Is it imperative to performing the job that the person can undertake This activity in such a strictly set time limit?
- b. Are there any reasonable adjustments that can be made to assist the disabled person to do the job?

It is also relevant to consider the position with regard to existing fire fighters. For instance, if Fire Services employ firefighters who, if they undertook the initial recruitment tests, might also now perform them at a slower rate, yet they are fully able to the job, this might indicate that being able to perform this task at the required speed may not be a genuine competence standard, which is objectively justifiable.

1. Tests need to fairly reflect the real requirements of the job.

In order for the Fire Service to ensure that any tests set are fair, the tests need to be clearly based on required competencies of the job. The service needs to feel confident that it is not setting arbitrary requirements that don't fairly reflect the actual requirements of the job. Because the current tests have not been devised with the DDA in mind, Services will need to look at how they operate the tests to ensure that if required they can make adjustments to them. Consider the fact that many Services set very high standards for visual acuity, yet once a firefighter experiences eyesight problems whilst serving, adjustments are often made. Thus, a recruit who can do all the tests but may have an eyesight issue, should be given the same access to any adapted equipment or support that a serving firefighter might get. It would potentially be difficult to prove that refusing to recruit a person to a firefighting role who needed glasses was necessary and objectively justifiable when firefighters in service are able to wear glasses safely and effectively.

2. Test designs need to allow for reasonable adjustments to the testing methodology.

The design of any test also needs to take into consideration what reasonable adjustments could actually be made to the way the tests are carried out. For example, the Service might require someone to be able to give and understand orders. The test for this may be that a person is given a list of orders, has to write them all down, and then pass them onto a colleague. A firefighter with dyslexia might find this very difficult because of their disability. As a reasonable adjustment, the Fire Service could consider allowing the person to use a tape to record the orders, rather than having to write them down, or some other method. Obviously, any adjustments would have to be 'realistic,' i.e. be a suitable alternative way of completing a task that would actually work on the job. Again, current tests will not have been designed with reasonable adjustments in mind, so Services will need to operate some discretion with regards to how tests are completed.

3. Those administering the tests must fully understand the DDA and how to make reasonable adjustments.

There will be overall Service-wide policy on what the point of entry tests will be but the Service needs to ensure that staff at regional or other training centres understand what reasonable adjustments could be made and how to make them. Naturally, this may have to happen through a process of discussion to decide on the best approach. Some disabled people may request adjustments that the service feels are unreasonable but how does it decide this?

In short:

- a. Ask what the actual required competence is.**
- b. Ask whether there are other ways a disabled person could demonstrate that competency if their disability means that the usual method of assessment places them at a substantial disadvantage.**
- c. Decide what the "bottom line" is, i.e. what will the service insist upon as a minimum required standard achieved in a certain way? If there is good evidence to show that these requirements are necessary, then the Fire Service is less likely to be opening itself up to claims of discrimination.**

Training of staff involved in the recruitment process

A crucial part of ensuring that a recruitment process is fair, efficient and effective, is ensuring that all aspects of the 'recruitment journey' are staffed by people who:

- understand the requirements of the DDA in general
- understand the part they play as an individual
- have access to more advice and support should they need it.

Don't forget frontline staff, temporary staff and contractors. All of these people are acting on behalf of the Fire Service and so Services must ensure that they do not discriminate. Even people who work on reception or who help out at open days may get queries from disabled people, so they should know how to deal with these in the correct manner.

Asking about disability in the recruitment process

It is not unlawful for the Fire Service to ask job applicants whether they have a disability (see paragraphs 7.27 and 7.28 of the DRC's Statutory Code of Practice on Employment and Occupation). However, the Service should be careful to ensure that they are not trying to deter disabled job applicants by asking about disability or long-term health issues. It would be better to have a statement on any application forms or other materials along the lines of:

"If you have a disability or long-term health condition that you feel would require us to make reasonable adjustments please tell us about what these are".

By making a statement like this, the Fire Service is not asking the applicant simply to tell it about their medical details but is asking about adjustments at work. Some disabled people don't need any adjustments, even to do the job of being a firefighter. Thus, by stating it in this way the Fire Service is demonstrating a more inclusive approach.

If a person does request a disability-related adjustment the Fire Service may ask the person requesting it for evidence that the impairment is one which meets the definition of disability in the Act. It may be appropriate to do so where the disability is not obvious. However, the Fire Service should not ask for more information about the impairment than is necessary for this purpose. Nor should they ask for evidence of disability where it ought to be obvious that the Act will apply (see section on definition of disability).

In general, a good practice approach would be to meet applicants' requests for reasonable adjustments, rather than trying to establish first whether they fit the DDA definition of disability. This means that the process can be much

more efficient and inclusive and much less likely to lead the Service to discriminate.

Essentials of the DDA for recruitment staff

The list below sets out some basic principles that should guide staff involved in recruitment on the implementation of the DDA:

- The duty to make reasonable adjustments arises at all stages of the recruitment process
- All applicants should be given the opportunity to request reasonable adjustments at any stage
- Staff should know where they can get any support requested (e.g. how to book qualified sign language interpreters and how to provide large print versions of documents).
- Staff should ensure that they do not make assumptions about how a person's disability or health condition affects them or their potential ability to become a firefighter.
- Staff must ensure that they do not implicitly operate 'blanket bans'. This will be unlawful. It may be the case that recruitment policies in the Fire Service have not had time to 'catch up' with the application of the DDA in October, nevertheless staff should ensure they know what to do to ensure that they do not unintentionally discriminate.
- Staff must be aware that the Fire Service has a duty to consider reasonable adjustments to a disabled person's job, so any adjustments made in the recruitment process may need to be carried over into employment.

EXAMPLE:

An applicant to join the Fire Service has always been good at sport and physical activity, and enjoys climbing in their spare time, however, they have diabetes and have to wear glasses to correct their eyesight. They apply to the Fire Service and pass all the physical tests. However, after a medical inspection, they are told that the Fire and Rescue Service cannot recruit them as they have diabetes and would be a danger to themselves and their colleagues.

They are obviously a capable and responsible person, and meet the physical requirements set by the Service. The Service's refusal to recruit them because of their diabetes and eyesight amounts to a blanket ban, which is unlawful. What the service should do is undertake a full risk assessment to see whether their disabilities pose any real risks in an operational environment, and then look at what reasonable adjustments can be made. The assessment must treat the disabled person as an individual and involve them fully, as they are likely to be the best person to understand their condition. Only after the above has been done, and the Service still feels that even with adjustments they could not be a firefighter, might they be in a position to refuse to recruit them.

EXAMPLE:

An applicant to join the Fire and Rescue Service has been a disabled athlete for a number of years and worked in a number of construction environments. The applicant wears a prosthetic limb but is unable to complete the physical tests to the required level. The Fire Service refuses to appoint as they state the applicant should have achieved a higher level of attainment in each test and also that it is unsafe to wear a prosthetic limb in a fire situation.

First, the decision to refuse the applicant entry to the Service appears to have been based upon their disability. The Fire Service should consider:

- a. Were appropriate reasonable adjustments should be made to the administration of the point of entry tests to enable a decision to be made as to the applicants ability to carry out the role for which the test is designed. If they weren't, the Service would need to ensure that it provided the disabled applicant with the opportunity to retake the tests which incorporated appropriate reasonable adjustments.
- b. Would other people who achieved the same levels as the applicant normally be allowed to join the Fire Service? If they would, then the Fire Service may be discriminating against this job applicant. If they wouldn't, and no reasonable adjustments could be made to the tests, then it might be reasonable not to recruit the applicant.
- c. Is the Fire Service making assumptions about the applicants's prosthetic limb? They would need to provide sensible evidence of why the limb would be an unacceptable risk. There may be risks associated with his prosthesis but the Service must fully investigate what these might be and what adjustments they could make. They cannot just make an assumption that the person would not be able to do the job.

EXAMPLE:

An applicant to join the Fire Service has a history of schizophrenia which is controlled by medication. They declare this on the application form. The Fire Service decides not to ask them to continue with the process and undertake the point of entry selection tests, as they feel that the job might make their disability worse.

First, the Fire Service is making a generalised decision about a disabled person without knowing anything about the individual's condition, methods of control and general 'coping' mechanisms. This is likely to be unlawful. The Fire Service may also be assuming that the disabled person has not given any thought to the issues that their condition might raise if they became a firefighter. Disabled people do not want to waste their own time, and are not likely to enter into the recruitment process if they don't think they have any chance of success. Thus the Fire Service would need to consult the applicant individually about issues of concern and seek to ensure that all options around making reasonable adjustments were taken up.

Section 5 Retention of Firefighters who become disabled

MAIN POINTS:

- Fire Services must not dismiss a disabled firefighter on the basis of assumptions, prejudices or blanket bans but must consider making reasonable adjustments first.
- Fire Services must first look at keeping firefighters in an operational role.
- Fire Services should not make decisions about dismissing a disabled firefighter on the basis of medical evidence alone.
- Fire Services must develop sickness absence policies that can accommodate the requirements of disabled employees.
- Some of the issues discussed here are covered in the section on occupational health/medical adviser issues and in the pensions section.
- Redeployment is a good way to retain firefighters who cannot remain operational, but the Fire Service must try to keep them in jobs commensurate with their skills and experience.



The DDA says that it is unlawful for an employer to discriminate against a disabled person whom it employs. by dismissing him, or subjecting him to any other detriment".

If a firefighter, (irrespective of the duty system employed), has a disability which impacts on his or her ability to carry out their job, the Fire Service must consider whether reasonable adjustments can be made to overcome the problem. If not, thought should be given to retention, for example by transfer to a suitable vacant post, before dismissing the disabled person.

This does not mean that it will never be lawful for the Fire Service to dismiss a disabled firefighter. However, the Fire Service must ensure that it handles cases of dismissal carefully, having proper regard to its duties under the DDA.

The DDA also says that it is unlawful for an employer to discriminate against a disabled person after that person's employment has come to an end.

What does the service have to do?

The Fire Service has a duty to make reasonable adjustments to the firefighter's existing operational role, before it can consider redeployment or ill health retirement for a firefighter who develops or declares a disability. Please refer to the section on reasonable adjustments for more information on what these are and how to make them.

It may be that Fire Service managers, or the occupational health/medical adviser concludes that a firefighter is no longer able to continue in an operational role, even with reasonable adjustments. This decision must be carefully considered, correctly arrived at and fully documented.

When considering the option to redeploy firefighters into a non operational role, Authorities will need to consider the opportunities that could apply to retained firefighters. However, this is a matter of contract between the Authority and its employees.

The Fire Service also has duties to former employees under the DDA. Post-employment discrimination is unlawful. For example, a Fire Service should not give a disabled firefighter a poor reference, if the reason for doing this is because of the person's disability. It is not advisable for a Fire Service to comment negatively about the effect a person's disability may have on their ability to do another job. The Service should concentrate upon the person's abilities and skills. It is for the next employer to decide about how the person's disability can be accommodated by them for that particular role.

It is also unlawful to victimise a former employee by providing a poor reference. For example, if a disabled firefighter took a disability

discrimination case to an employment tribunal, and later asked for a reference in respect of new employment, if the Fire Service refused to give a reference, or gave a poor reference, because of the previous discrimination claim, this would be unlawful.

How should the process be managed?

It would be advisable for Fire Service HR teams to review current policies to ensure that they meet the requirements of the DDA. Here are some points to bear in mind:

- **Decisions by medical diagnosis alone are unlawful**

Decisions about what action to take when a firefighter's impairment, disability or health condition causes problems in respect of carrying out an operational role must NOT be based purely upon medical opinion. This is not because occupational health or medical advisers do not understand the issues. It is because their role is to provide information about the condition and its impact on the job, and to give advice about ways any problems could be overcome, for example by making reasonable adjustments. It is not their duty or responsibility to decide what to do with this information. The responsibility for making a final decision about adjustments, re-deployment or even ill health retirement rests with Fire Service Managers. They must consider reasonable adjustments, including redeployment, in the manner outlined in Section 3.

- **Individual and competent assessments**

Assessments to determine whether a firefighter can remain in an operational role should be based upon their individual circumstances. They should also be carried out by professionals who have a good understanding of the requirements of the DDA and have a general understanding of the social model of disability. Every person is different, and their impairment will affect them in different ways.

- **De-medicalisation of management issues**

There may be a tendency for managers to see decisions about medical fitness as "medical issues" rather than as a decision to be taken jointly by managers and medical advisers, having consulted the disabled firefighter and other professionals if necessary. The responsibility for making decisions about reasonable adjustments, or about any other possible solutions, rests with managers.

- **Agreed understanding of process**

There must be a very clear process in place to manage decisions about reasonable adjustments and ill health retirement. Sometimes there can be a breakdown in communication between medical advisers and managers, or between the disabled firefighter and managers. Everyone must feel that they are a part of the process and have ownership of it.

- **Education and debate**

The key to good decision making on DDA issues is to ensure that those taking decisions have been given adequate training and have the opportunity to discuss issues before making a decision. No one will have all the answers and to some extent decision-making may require a little creative thinking and even a leap of faith that things can be made to work. A trial period following the implementation of adjustments should be considered in order to properly consider the effectiveness of the adjustments. Success is not guaranteed but in terms of acting appropriately, this approach is much less likely to lead to unlawful discrimination.

- **Commitment of resources**

Sometimes assessments of a person's disability or health condition may require expert advice. This can be expensive. However, not every case will need specialist input. Where specialist advice is necessary, the cost of seeking this advice should be balanced against the costs incurred if a case of alleged unlawful discrimination goes to tribunal.

- **Where dismissal is part of efficiency measures, the Fire Service must still ensure that it does not discriminate against a disabled firefighter.**

For example, a Fire Service may need to reduce its number of operational firefighters. When the Service is deciding which firefighters they may have to dismiss, they must ensure that any criteria used are not discriminatory. For example one of the criteria might be flexibility with regards to shift rotas. A disabled firefighter is less able to be flexible about shift patterns because of regular medication they take for their condition, which can have an effect on their concentration. The Fire Service must ensure that it does not include this firefighter for dismissal, if the sole reason for them not being "flexible enough" is their disability or health condition.

- **Audit of outcomes to improve consistency across Fire Services**

Many Fire Services will already be doing much of what is needed and not recognise the fact. Fire Service managers should facilitate mechanisms to enable experience and knowledge sharing across the service. CFOA is committed to establishing a web-based forum, which will allow authorities to share experiences, report on issues around making reasonable adjustments and provide a reference point to enable consideration of general issues before making decisions about reasonable adjustments in individual cases. For more information on this, please contact CFOA.

Return to work after sickness absence

The Fire Service National Framework (2004/5) Chapter 5 (paragraph 5.25) states that:

"Fire and Rescue Authorities need to take effective steps to improve sickness management and to reduce ill health retirements." The Fire Service may well be losing experienced and capable firefighters because of a failure to effectively manage ill health/disability issues. However, the steps to resolve this are not as complicated as might be anticipated.

Long-term absences may be due to a disability or health condition (declared or undeclared). It is likely to be unlawful to penalise someone for a long period of absence from work, if the reason for that absence was directly related to their disability. The Fire and Rescue Service needs to ensure that any absence management policy takes into account what the Service can reasonably be expected to do in terms of discounting disability-related absence from sickness absence recording and discounting disability related absence in terms of the effect that it has on any employment benefits, including payment of normal salary during periods of disability related absences. Some disabled people may need to take more time off work because of their disability and it is recommended that the Fire and Rescue Service develops a policy on disability-related leave.

Such a policy would mean that when a person needs time off because of their disability (they may need an operation, for example) they can openly plan this in advance with managers. This enables managers to manage staff more effectively because they are not taking a constantly reactive approach. Generally though, disabled people will not need to take extra time off work but where this is necessary a good disability leave policy will help to create a culture of openness and confidence so that absence management can be more effective overall.

Some key barriers to returning to work after sickness absence are:

- Lack of management will to accommodate a disabled firefighter on their team
- Failure to understand barriers and solutions and a concentration on the medical aspects of disability
- Fear of litigation, leading to lack of contact from or with the disabled firefighter
- Assumption that someone cannot return until they are 'fully fit for duty'

EXAMPLE:

A firefighter is diagnosed with HIV. They are physically able to perform their job because they have medication that can help them to manage their condition. However, the firefighter is off work for six months because of the mental stress of having the condition and of dealing with negative attitudes from other people. The firefighter fears that the Fire Service will want to take them off operational duties and that they will not have any input into this decision.

This sort of situation can easily go from one where the Fire Service could take some active and positive measures to resolve it, to one where inertia means that nothing constructive really gets done. The firefighter should be given the option of talking about issues on an informal basis, discussing what adjustments and help they may need to enable them to do their job and what managers can do to support them in a return to work (including managing perceptions of that person by their colleagues). It may be appropriate for the Service to talk with a firefighter on 'neutral ground' rather than making them come into work for a case conference. This will help to engender more confidence in the firefighter that they will be treated fairly. When an employee feels able to trust their employer, they are much more likely to be open and willing to cooperate with them to seek a reasonable solution.

Section 6 Performance Assessment and Career Progression

MAIN POINTS:

- Fire Services must not discriminate against disabled firefighters in any performance assessment they undertake.
- Fire Services must not allow a firefighter's disability or health condition prevent them from pursuing a rewarding career in the Service.
- Assessment centres must be physically accessible to disabled people.
- Assessment procedures must be flexible to ensure that Services do not discriminate.



IPDS will introduce new methods of assessment and routes to promotion. IPDS has the potential to be a much more inclusive performance measurement mechanism for disabled firefighters than the very prescriptive testing that has been used in the past. There will be differences in how each Fire Service implements and develops their IPDS systems, but there are some common points that Fire Services should remember:

- a. Any manager who will be assessing firefighters should have a good understanding of the DDA, especially about reasonable adjustment.
- b. Fire Services need to ensure that their IPDS procedures and practices are inclusive and non-discriminatory

Some further guidance on this follows below.

Fair Assessment

In order to ensure fair assessment of disabled firefighters and to avoid discrimination, the Fire Service needs to consider the following issues.

1. Assessment centres must be physically accessible to disabled people

Assessment centres will be used by a range of people and some of them may have mobility or sensory impairments. This is especially true as IPDS introduces multi-level entry, which may mean that more disabled people can enter the Service at higher ranks. In addition, if the Fire Service uses its assessment centres to deliver any services to the public (demonstrations, open days etc), these centres must be physically accessible to disabled people to meet the Service's requirements under Part 3 of the DDA. This means considering issues like:

- Level access and internal navigation for wheelchair users
- Sufficient allocation of disabled parking spaces
- Good signage around the building
- Induction loops for hearing impaired people
- Information booklets in large print, audio tape etc
- Training for assessment staff on how to help disabled people to use the centre

The above is by no means an exhaustive list. More information about improving physical access to buildings can be found in Section 12.

2. Assessment testing procedures must be accessible

In order to ensure assessments are fair, the procedures themselves need to be accessible. Here are some points to consider:

- a. Has the firefighter been given the opportunity to request reasonable adjustments at all stages of assessment?
- b. Is communication between the Fire Service and the assessment centre efficient so that reasonable adjustments are put in place? (For example a firefighter with dyslexia may need extra time for a written assessment, and may inform their line manager but the line manager must ensure that they put the arrangements in place at the centre.)
- c. Has the assessment centre got assessment materials available in other formats (e.g. large print)?
- d. If evidence is required to prove competency, has provision been made to ensure that this can be provided in a variety of formats (e.g. a firefighter with dyslexia may find it easier to complete a portfolio electronically with voice activated software, or may prefer to submit video evidence of undertaking a task rather than writing about it).
- e. Are the tests a fair reflection of what the firefighter will have to be able to do in their job? Often, employers set tests that do not really reflect the requirements of the job and such tests can effectively lead to discrimination.

Taking account of performance issues related to disability

One of the ways that a disabled firefighter may experience discrimination is because of an unfair assessment by a line manager. This is not simply about ensuring that standard tests and assessment meetings are accessible, it is also about the way a person is assessed. The two examples below demonstrate the point:

EXAMPLE:

A firefighter with a speech impediment feels very unhappy about delivering presentations to groups of people because of their disability, and thus prefers to deliver Community Fire Safety (CFS) training in other ways. As part of their Community Fire Safety duties their line manager requires them to give formal presentations to groups of people about fire safety. When the firefighter applies for promotion, the firefighter's line manager assesses them against the required competencies and tells the firefighter that unless they give formal presentations they will not meet their competencies and will not be able to progress towards promotion.

In this situation, the firefighter could have a claim for a failure to make reasonable adjustments and disability-related discrimination. The reason they find it difficult to demonstrate this particular competency is because of their disability. IPDS is generally set up not to be overly prescriptive about how a firefighter can evidence their personal qualities and attributes. What the manager should consider is whether reasonable adjustments could be made to enable the firefighter to meet the competency. For example, could they use a video instead of having to talk to lots of people? Could they break people up into groups to discuss issues? Could they get a colleague to assist them with presentations? Perhaps the Fire and Rescue Service could contact Access to Work, which may finance training and other support for this firefighter.

The main thing to remember is that if these options are considered fully, a solution could well be found. The Fire and Rescue Service needs to ensure that it has done everything it can to put reasonable adjustments in place and to ensure that a disabled firefighter is not being penalised for a reason relating to their disability.

EXAMPLE:

A firefighter declares to their line manager that they have epilepsy. The line manager undertakes a risk assessment in conjunction with the Service's medical adviser and tells the firefighter that they will not be allowed to do work at heights in case they have an episode. When it comes to assessment time, another manager assesses the firefighter and says that because they cannot demonstrate a competency to work at heights, they cannot progress towards meeting their competencies and promotion.

The Fire Service has made what it views to be a reasonable adjustment for the firefighter to enable them to continue doing their operational role. However, they are then penalising the firefighter for this by denying them career progression. The assessor should consider whether the firefighter needs to be able to do this particular aspect of the job in order to demonstrate that they are competent and eligible for promotion. The amount of times the firefighter would be required to work at heights may actually be few in number, and not being able to carry out that aspect of the job because of their disability does not mean that they cannot do the rest of their job to the best of their ability. The Fire Service would also need to review the original decision about not allowing the firefighter to work at heights. Was this made with full knowledge of how the firefighter's condition affects them (epilepsy comes in many forms)? Was appropriate advice sought and a justifiable decision taken?

Section 7 Discipline and Grievance

MAIN POINTS:

- The DDA does not prevent Fire Services from disciplining disabled firefighters for reasons unconnected to their disability.
- The DDA does require Fire Services to ensure that disabled firefighters are not unfairly disciplined for a reason related to their disability.
- The DDA does require Fire and Rescue services to make reasonable adjustments to disciplinary or grievance procedures where these place a disabled current or former firefighter at a substantial disadvantage.
- There are new statutory disciplinary and grievance procedures that apply to both employers and employees. If an employer or an employee does not follow the statutory procedures, this can have an impact on whether they are able to bring a claim (in the case of the employee), the outcome of the claim, or the level of compensation payable. It is not possible to give further detail about these issues in this document, but further information can be obtained from ACAS or the DTI's website.



Fire Services will already have policies and procedures on discipline and grievance. The purpose of this section is to ensure that any policies that a Service has take adequate account of the duties imposed by the DDA.

Disciplinary Issues

The DDA does not expect the Service to overlook issues of misconduct, disobeying orders, or any other matter for which other non-disabled firefighters would normally be subject to disciplinary procedures.

However, there are two key points to bear in mind:

The Service should ensure that it does not discipline a disabled firefighter for a reason related to their disability, as this may amount to unlawful discrimination.

Ensuring that the Fire Service does not discipline a disabled firefighter for a reason related to their disability is a key feature of trying to avoid discrimination. For example, a firefighter may be making mistakes in written reports that they have been asked to produce. The Service should first ensure that this has not happened because of the firefighter's disability (they might have dyslexia for example), and that there are no reasonable adjustments that should be made (for example, using voice activated software to produce reports).

Sometimes disabled firefighters will conduct themselves in a manner that requires disciplinary procedures to be brought but the Service must ensure that their conduct is not disability-related and that the Service has not failed to make reasonable adjustments.

Any procedure used to discipline firefighters MUST be accessible to disabled firefighters.

The use of an accessible disciplinary procedure is vital. A disabled firefighter may need support to ensure that they can participate fully in any proceedings. For example, a person with a hearing impairment may require a note taker at meetings, to ensure that they do not miss anything that is said. Another example would be where a disciplinary procedure required a firefighter to submit any defence or reasoning in writing. A firefighter with dyslexia may find this especially difficult, and the Fire Service must ensure that it makes reasonable adjustments in this case. This could mean providing independent support to complete the letter, or use of voice activated software so that the firefighter can complete the letter on a computer.

Grievance Issues

There will be times when a disabled firefighter will want to use the Fire Service's grievance procedure. This may be because they feel they have experienced disability discrimination or it may be about another matter. Again, there are two points to bear in mind:

Any grievance procedure should not be bureaucratic and defensive but designed to provide a means to resolve issues collaboratively and quickly.

An effective grievance procedure should not be about proving who is to blame but about identifying what the problem is and looking at what can be done about it. For example, if a firefighter needs some adjustments to do their job (for example, a firefighter with dyslexia may need some support to complete written reports) and this has not been provided, the grievance procedure should not focus on why this was not done but what can be done to sort the problem out.

Many disabled firefighters just want to get on with their job. Managers whose behaviour is such that it prevents progress being made, must be dealt with, for example by being given extra training on disability equality and the DDA to ensure that leadership from the top is effective and fair.

It is very often the case that a minor issue is overlooked, or is not dealt with in good time. What then tends to happen is that issues and problems accumulate, and eventually what started out as a small matter becomes the straw that breaks the camel's back. This leaves the service with a much messier and more complicated situation to deal with.

Any grievance procedure used by the Fire Service must be accessible to disabled firefighters

It is important that any grievance procedure is accessible, so that disabled firefighters can use the procedure on fair and equal terms with non-disabled colleagues. For example, a disabled firefighter may want an independent advocate to help them in the procedure, especially if the grievance has been pursued because of alleged disability discrimination. Another example would be a disabled firefighter with mental health issues, who requests specialist support to enable them to access the procedure.

Section 8 Medical/Occupational Health Issues

MAIN POINTS:

- Medical advisers need to understand the barriers to and in employment that people with disabilities and health conditions face, and should be fully aware of the range of potential solutions available.
- Medical advisers need to understand reasonable adjustments.
- Medical advisers need to understand the operational requirements of a firefighters role and how a person's condition may affect their ability to perform it.
- Medical advisers must treat disabled firefighters as individuals and not rely on stereotypical assumptions or prejudices.
- Medical advisers should not be expected to make decisions about redeployment or ill health retirement. Their advice should help managers make decisions.
- Medical advisers should take a good practice approach and assume that a person with an impairment or health condition is likely to have rights under the DDA. They should be creative in suggesting potential reasonable adjustments that the Service could make.



Medical advisers need to think about disability and disabled firefighters in a way that perhaps they may not be used to doing. The way that medical advisers understand disability and disabled firefighters will influence the way in which they deal with the issues posed by the DDA.

Most medical and/or occupational health advisers are accustomed to using the 'medical model' of disability (see Section 13). A much more helpful approach is to consider the 'social model' of disability (again see Section 13) - i.e. an appreciation of barriers and solutions.

In reality, especially in the Fire Service, there will be limited opportunities for people with particular disabilities, because there are certain 'musts' involved in the job. However, within those constraints, using the social model will help to ensure that barriers are overcome, where it is possible to do so, and that the Service is as inclusive as possible.

Occupational health/medical advisers must ensure that they understand the DDA definition of disability, as this will be the one used if any claim of discrimination on the grounds of disability is made.

New Recruits

The main issue for occupational health/medical advisers at the recruitment stage is when an applicant identifies that they have a disability or health condition, and thus the Fire Service may refer them to a medical or occupational health adviser for an assessment.

At the time of going to print, the ODPM is about to issue a consultation document on medical/fitness issues for recruitment and retention of firefighters. The DRC has provided advice on this document, and it is advisable in the interim for Fire Services to use the two documents together

Guidelines are only that. Fire Services should apply discretion and treat each case on an individual basis.

There are three questions to ask when considering an application from a person who says that they have a disability or health condition:

- a. What are the real requirements of the role, i.e. what will the person actually be doing in practice?**
- b. What effects does the person's disability/health condition have upon their ability to do this range of activities?**

c. What reasonable adjustments could the Fire and Rescue Service make to enable the person to be successful in the recruitment process and in the their job?

Existing Firefighters

The Fire Service, has historically operated a narrower definition of disability than is contained in the DDA, this is because of the provisions of the pension scheme. As the DDA now applies to the Fire Service, it follows that the Service should not use any definition of 'disabled person' which is narrower than that in the Act. There are genuine occupational requirements that firefighters must meet but these requirements must fairly reflect what the actual job is, rather than being based upon abstract standards.

The issue of pension entitlements for new recruits and serving firefighters are very complex and at the time of going to print are currently being consulted upon. See Section 10 Pensions

Taking the right approach

A risk assessment must be suitable and sufficient. It should identify the risks associated with a work activity, taking account of any reasonable adjustments put in place for the disabled person, and should be specific for the individual carrying out a particular task. It is therefore unlikely that a Fire Service which has a general policy of treating people with certain disabilities (such as epilepsy, diabetes or mental health conditions) less favourably than other people will be able to justify doing so - even if that policy is in accordance with the advice of an occupational health adviser.

Even when the Fire Service receives advice from an occupational health adviser stating simply that an employee is "unfit for work," it must seek further advice from the OH adviser about why they have stated this and then ensure that they consider making appropriate reasonable adjustments.

Using advice effectively

A person does not have rights under the DDA unless they meet the definition of disability contained in the Act. If an occupational health advisor, or medical advisor, is asked to give an opinion as to whether someone is disabled under the DDA, they will often have to seek specialist advice. This can take time and there can be significant costs involved. It is often unnecessary and unhelpful to use time and resources to determine whether someone is covered by the DDA or not, when a more effective and efficient approach would be to focus on any barriers that person faces in carrying out their job. The following approach is recommended:

If the medical or occupational health adviser is reasonably familiar with the person's condition and feels able to make a judgement about how this may affect their ability to do their operational role, then it may not be necessary to seek specialist advice. A good practice approach should be adopted. Rather than saying "prove that the firefighter is disabled as defined under the DDA and then we will look at adjustments," the adviser should assume that the person has rights under the DDA and look at what adjustments can be made. Even if, at that moment in time, the person may not fit the definition but requires some adjustments, if these are put in place, they could well ensure that the person's condition does not worsen and the Service retains a valuable member of staff.

If the medical or occupational health adviser is unsure about the effects of the person's condition, they should seek expert advice. This may take time and incur expense but if the adviser makes unfair or incorrect assumptions about a person's disability, they may end up making recommendations that could later be construed as discriminatory.

It is important to avoid a situation where the medical or occupational health adviser and other medical experts end up in dispute about the specific medical aspects of a person's health condition or disability. The emphasis in the DDA is on changing practices, so the Service's medical or occupational health adviser should seek expert advice that gives them the best opportunity to make recommendations about possible adjustments that could be made in order to ensure the disabled firefighter is not placed at a substantial disadvantage.

REMEMBER:

The decision about making reasonable adjustments is one for managers, not for medical or occupational health advisers. The medical or occupational health advisor is responsible for considering the impact that the person's condition has on their ability to carry out their job, and to advise on what adjustments could be made. The manager's role is to decide what is reasonable and what can be done in practice.

Issues of disclosure and confidentiality

The issue of managing information about a firefighter's disability is one that concerns many Services.

The DRC's statutory Code of Practice (paragraph 8.23) states that:

"The Act does not prevent a disabled person keeping a disability confidential

from an employer. But keeping a disability confidential is likely to mean that unless the employer could reasonably be expected to know about it anyway, the employer will not be under a duty to make a reasonable adjustment. If a disabled person expects an employer to make a reasonable adjustment he will need to provide the employer - or someone acting on his behalf - with sufficient information to carry out that adjustment."

However, in the Approved Code of Practice and Guidance on the Management of Health and Safety at Work Act paragraph 85 says: "'Employees' duties under section 7 of the HSW Act include cooperating with their employer to enable the employer to comply with statutory duties for health and safety. Under these Regulations, employers or those they appoint (e.g. under regulation 7) to assist them with health and safety matters need to be informed without delay of any situation which might present a serious and imminent danger. Employees should also notify any shortcomings in the health and safety arrangements, even when no immediate danger exists, so that employers can take remedial action if needed."

Consequently, given the nature of a firefighter's work, there will be circumstances in which a firefighter should disclose details of a disability, even though the DDA does not generally require this. If such information is disclosed to a medical or occupational health advisor, rather than to the Fire Service itself, the medical advisor is usually prevented from passing on this information without the firefighter's consent, as this would breach the Service's data protection duties. However, both the firefighter and the medical or occupational health advisor have a duty to ensure that duties under health and safety legislation are also met.

Thus the medical or occupational health advisor should:

- a. Try to reassure the disabled firefighter that if they give consent to disclose details, they will receive a fair assessment of what adjustments could be made.**
- b. Try to facilitate an open discussion with the firefighter's line manager about their disability, any issues this may raise in the workplace, and what reasonable adjustments could be made.**
- c. Ensure that managers do not make assumptions, especially about any perceived 'risks' associated with the firefighter's disability or health condition.**
- d. Ensure that managers discuss and deal with issues with regard to risk in a constructive and inclusive manner.**

The Fire and Rescue Service overall should:

- a. Develop a more open culture where disclosure will be met with an appropriate response.**
- b. Ensure that Fire and Rescue Service managers have been given training on dealing with health and safety issues with regard to the DDA duties not to discriminate and to make reasonable adjustments.**
- c. Ensure managers take an inclusive approach to dealing with these issues, mostly problems will arise when managers take an approach which says that health and safety is paramount, and which does not take account of the firefighter's own feelings and concerns about the issue.**

Bear in mind that it may not be necessary for the line manager or colleagues to know all the details of a firefighter's disability or health condition. They need to know enough to make reasonable adjustments and to manage any risks effectively.

An open and equity-based approach to managing these issues will benefit everybody.

EXAMPLE:

A firefighter undergoes a routine health check and discovers that they may have diabetes. They seek advice from the Service's medical adviser and an independent specialist, who both confirm that the firefighter does have diabetes. The firefighter does not want their line manager to know about this, as they think the line manager will not want them to remain operational. The OH advisers outline to the firefighter their rights under the DDA and also what the employer's duties are. They then suggest that they arrange a case conference with the line manager, human resources and/or equality staff and the firefighter to discuss any risks and what reasonable adjustments may need to be made.

The case conference takes place, and although at first the line manager has some concerns, the OH adviser and the HR adviser are able to advise that as long as the firefighter is assisted to manage their diabetes, there shouldn't be any major issues. The line manager and the firefighter discuss what the Service can do to help, and an action plan is drawn up and signed by all parties.

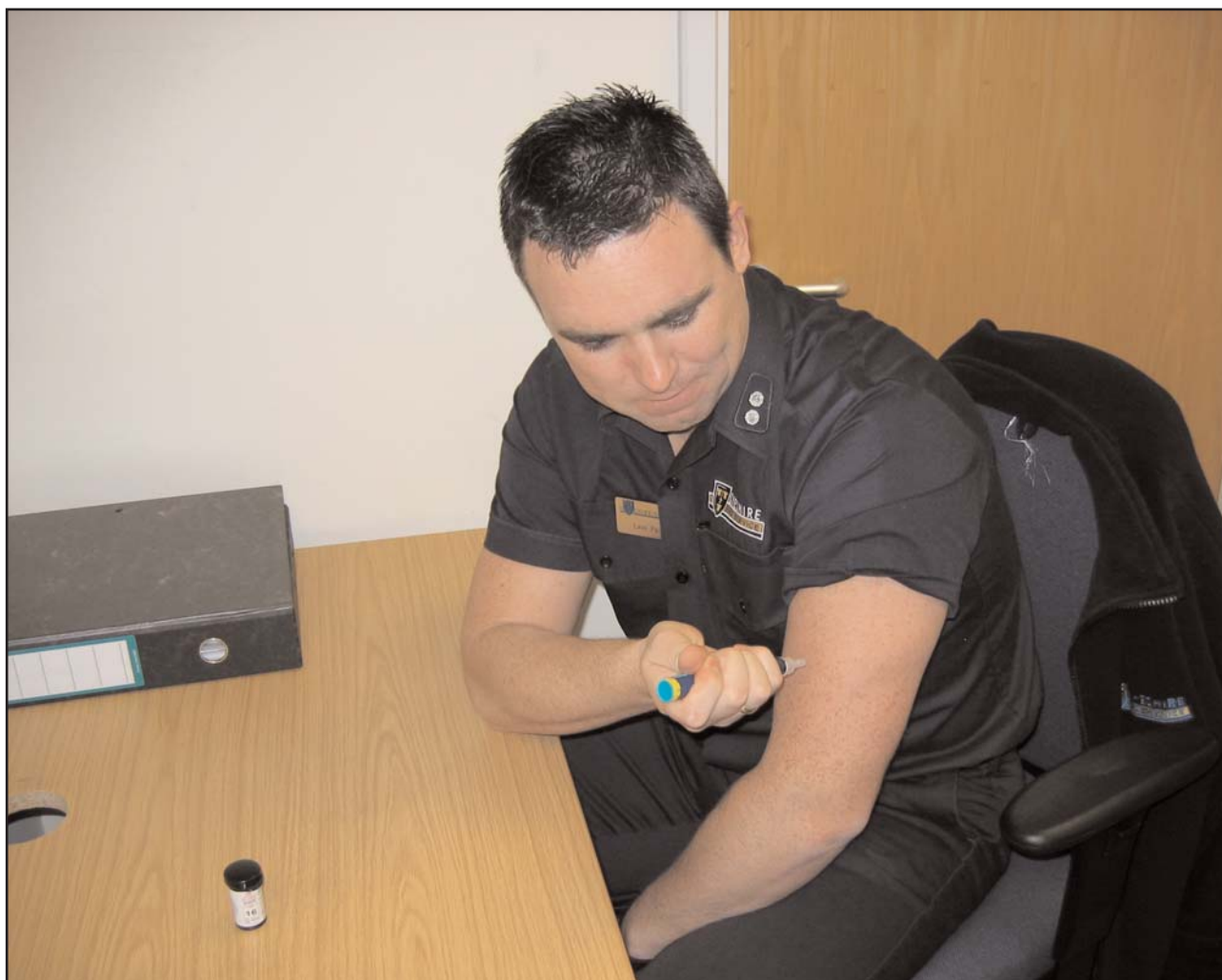


Diabetes Testing and Treatment Kit

Section 9 Dealing with harassment and victimisation

MAIN POINTS:

- Fire Services must not subject, or allow, disabled employees to be harassed or victimised because of their disability.
- Fire Services are responsible for the conduct of all their employees.



What the DDA says about harassment and victimisation

Harassment

The DDA says that harassment occurs where, for a reason which relates to a person's disability, another person engages in unwanted conduct which has the purpose or effect of:

- violating the disabled person's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

If the conduct in question was engaged in with the intention that it should have either of these effects, then it amounts to harassment irrespective of its actual effect on the disabled person. In the absence of such intention, however, the conduct will only amount to harassment if it should reasonably be considered as having either of these effects. Regard must be had to all the circumstances in order to determine whether this is the case. Those circumstances include, in particular, the perception of the disabled person.

Victimisation

Victimisation is a special kind of discrimination. The DDA says it is unlawful for one person to treat another ("the victim") less favourably than they treat or would treat other people in the same circumstances because the victim has:

- Brought, or given evidence or information in connection with, proceedings under the Act (whether or not proceedings are later withdrawn)
- Done anything else under or by reference to the Act, or
- Alleged that someone has contravened the Act (whether or not the allegation is later dropped).

It is not victimisation to treat a person less favourably because that person has made an allegation which was false and not made in good faith.

However, the fact that a person has given evidence on behalf of an applicant in a claim that was unsuccessful does not, of itself, prove that their evidence was false or that it was not given in good faith.

Unlike the other forms of discrimination which are made unlawful by the Act, victimisation may be claimed by people who are not disabled as well as by those who are.

What to do about complaints of victimisation and harassment

The aim of any policy on harassment or victimisation should be to ensure that all complaints are dealt with fairly, sensitively and seriously, whilst protecting the rights of both the alleged perpetrator and the alleged victim.

It is usually best to try to resolve matters informally, if the complainant agrees to this. This is because if a complaint can be resolved at an early stage and without escalation, there is more chance that the people involved will be able to put the matter behind them and work together in the future.

An informal approach could involve a firefighter deciding to communicate directly with the person who allegedly creating the problem. A line manager or HR manager may be asked to take informal action.

It is important that the Fire Service has clear policies and procedures about informal resolution of complaints, and that all employees are aware of the procedure to use if they wish to speak informally to a colleague or manager about an issue. Likewise, anyone who is approached about such an issue should also be able to refer to clear policy guidelines on how best to deal with the situation.

If the matter cannot be resolved informally, the matter should be dealt with formally. A formal approach could involve a firefighter making a formal complaint to a line manager or an HR manager, or they could seek support from their Union to make a formal complaint.

Again, the Fire Service will need to have a clear policy about dealing with such issues. The policy should state:

- a. Clear protocols about personal conduct either in an informal or formal process.**
- b. Clear reporting lines and clear lines of responsibility.**
- c. Top level management commitment to dealing with any issues quickly and effectively.**
- d. That any investigating manager should be properly trained to deal with such cases, including understanding the requirements that disabled firefighters may have.**

- e. **That resources may need to be committed to the process, for example to provide for reasonable adjustments or appropriate training.**
- f. **The aftermath of a complaint will need to be effectively managed.**

Points to remember:

- a. **A disabled firefighter may require reasonable adjustments to an informal or formal process. For example a firefighter with a mental health issue may need extra support to comply with the procedure.**
- b. **Colleagues may have made comments or acted in a way that was not intentionally negative. However, for the purpose of the Act, it is the effect that any such actions have, or could reasonably be expected to have, that matters.**

EXAMPLE:

Issue: A firefighter has a speech impediment. The others on the watch often make fun of them, but this is not done with malicious intent, and others on the watch are also teased. However, when the firefighter is put onto another watch, the watch members make many comments only about this firefighter and make them feel harassed.

Solution: The conduct of employees towards other employees is the overall responsibility of the Fire Service, as their employer. Of course some degree of humour helps firefighters get along in a difficult job but this should not develop into behaviour that amounts to harassment. The line manager responsible for the firefighters making the unwelcome comments must take action. They may wish to talk with them about disability, provide some disability awareness training, and discuss what should change in the future. Although the firefighter with the speech impediment could claim under the harassment provisions of the DDA, it is recommended that if the behaviour persists, the firefighter uses the internal grievance procedure before issuing a tribunal claim. If the firefighter does not attempt to resolve the matter internally before making a tribunal claim, the tribunal will want to know why, because the statutory dispute resolution procedures normally require an employee to lodge an internal grievance before bringing a tribunal claim.

Section 10 Pensions

MAIN POINTS:

- The amendments to the Firefighter's Pension Scheme allow the Fire Service to comply with its duties under the DDA.
- The DDA duties take primacy over the Pension Scheme regulations.
- Managers of the Pension Scheme and Fire Service managers need to fully understand the DDA and the duties it imposes upon them (refer to Section 10 of the DRC's Statutory Code of Practice on Employment and Occupation).

The interplay between the Firefighter's Pension Scheme and the DDA is a crucial one. This section has been prepared in consultation with the Fire Legislation, Safety and Pensions Division of the Office of the Deputy Prime Minister. It should be read in conjunction with Fire and Rescue Service Circular 30-2004 issued on 1st September 2004.

It should also be noted that at the time of going to print, new pension arrangements are out for consultation

The Fire Authority as an employer has duties with regard to pension schemes and should ensure that where it does have any influence over pensions policy or implementation, it pays due heed to its duties under the DDA. More information on this can be obtained in the DRC's statutory Code of Practice Section 10.

In paragraphs 10.6 - 8 of the DRC Code, it states that:

"10.6 Part 2 contains provisions which relate specifically to discrimination against disabled people by the managers of occupational pension schemes. The principal effect of these provisions is to make it unlawful for pension scheme managers to contravene a 'non-discrimination rule' which is deemed to be included in every occupational pension scheme."

"10.7 This non-discrimination rule effectively makes the managers of the scheme subject to the general provisions of Part 2 by doing two things":

"First, the non-discrimination rule prohibits pension scheme managers from discriminating against a disabled person who is a member or prospective member of the scheme in carrying out any of their functions in relation to the scheme. This includes functions relating to the admission and treatment of members of the scheme."

"Second, the rule prohibits the trustees or managers from subjecting such a person to harassment in relation to the scheme. "

"The Act sets out the circumstances in which a person counts as a prospective member of a pension scheme."

"10.8 The Act says that the other provisions of a pension scheme have effect subject to the non-discrimination rule explained above. This means that where there is a conflict between the non-discrimination rule and a rule of the pension scheme, the non-discrimination rule prevails". Thus, Fire Authority managers do not have to act in accordance with a scheme rule which would produce a discriminatory result. The Act also ensures that pension scheme

managers have power to make alterations to the scheme in order to make the scheme conform with the non-discrimination rule."

Fire Authority managers and pension scheme managers must ensure that they take full account of their duties under the DDA when considering pension arrangements. The provisions of the Firefighters' Pension Scheme are not incompatible with the DDA. However, much of what Fire Authority managers need to do is not explicit in the regulations.

The meaning of disablement in the case of a firefighter

Rule A10(2) of the Firefighters' Pension Scheme provides that "disablement means incapacity, occasioned by infirmity of mind or body, for the performance of duty".

While this is not the DDA definition, which refers to someone with an impairment that has "a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities" (section 1(1) DDA), it is not incompatible with the DDA definition.

As the DDA now applies to firefighters, and to the pension scheme, any attempt to define whether a firefighter is "disabled" should have regard to the DDA definition of disability (see Section 2). It is also advisable for the Fire Service to adopt a good practice approach. ***[Rather than approaching the matter narrowly - by trying to find out whether the firefighter is technically a disabled person under the DDA (because if they aren't the DDA duties won't apply), the sensible approach is to assume the person is a disabled person and to do what is necessary comply with the DDA duties.]*** This will ensure that the Fire and Rescue Service has acted in the best possible way. It will also mean that health conditions and disabilities can be much better managed from an early stage rather than storing up bigger issues to be dealt with at a later date. Don't forget that Access to Work can be used to help with making reasonable adjustments.

III Health Retirement on Grounds of "Permanent Disablement"

Rule A15 of the Firefighters' Pension Scheme states that:

"... a regular firefighter may be required by the fire authority to retire on the ground that he is permanently disabled". In order to comply with the DDA, if a firefighter may be deemed "permanently disabled," a Fire Service should:

1. Look at reasonable adjustments to determine whether it is possible to enable a firefighter to remain in an operational role.
2. If it is not possible to keep the firefighter in an operational role, consider

redeployment to another suitable role in the Service, including making reasonable adjustments where appropriate.

The definition of "regular firefighter" as amended in Part 1 of Schedule 1 of the firefighter's pension scheme is:

"In relation to any time on or after 13th September 2004, the expression means a whole-time or part-time member of a brigade, other than a retained or volunteer member of a brigade, appointed on terms under which he is, or may be, required to engage in firefighting or, without a break in continuity of such an appointment, may be required to perform other duties as appropriate to his role as a firefighter (other than, or in addition to, engaging in firefighting) and whose appointment is not a temporary one."

This means that a Fire Service can keep a redeployed firefighter in the Firefighters' Pension Scheme.

Redeployment of personnel

Where reasonable adjustments cannot be made to keep a firefighter in an operational role, and there is no opportunity to redeploy into another uniformed role, the Fire Service must consider whether there is a non-operational, non-uniformed role that the firefighter could be offered. The DDA provisions do not require the Fire Service to create jobs for disabled firefighters but the Service must ensure that it has made every possible effort to keep a firefighter in a role that is commensurate with their skills and experience. As detailed in the Archibald case (see Section 15), this can include redeployment to a higher level post, if it is reasonable to do so.

The intention of the September changes to the pension regulations "definition of a firefighter" was aimed at allowing firefighters to remain in roles related to fire fighting and in the scheme even if they are no longer engaged in operational duties.

There is no automatic right to retire. Any decision on retirement is a matter for the Fire Authority and not the individual. The Service can choose to retire on medical grounds, but care needs to be taken, especially, if the employee wishes to remain in service and reasonable adjustments are possible. It is up to the Fire and Rescue Service to determine if there is another role the firefighter can undertake and this includes moving into a "non uniformed" post.

The firefighter cannot refuse to move into a suitable redeployment role, but alternative options available to them are, for example:-

- If aged 50 and with 25 years or more service they can retire with their accrued pension.
- If not aged 50 and/or less than 25 years service, they can resign and defer their pension until they are 60 years of age.
- Resign - (But managers should be aware that the firefighter has the right to lodge a claim for constructive unfair dismissal.)
- Bring a judicial review in respect of the refusal of medical retirement
- Bring a DDA claim against the Fire Service and/or the pension managers, if the employee thinks that they have acted in a way that amounts to unlawful disability discrimination.

When employers seek to redeploy a firefighter into a non-uniformed role, other issues may need to be taken into account.

1. Pay parity issues - dropping the firefighter's pay is a matter of their contract, but could also fundamentally effect their current pension entitlement, as this is based upon a final salary scheme using the best of last three years salary for calculation purposes.
2. The DRC's Code of Practice (p159) states that if the pension is calculated only on the best of the last three years salary, and this salary level has had to drop in that time because of disability (i.e. as a result of redeploying them into a lower salary position) then it is likely to be a reasonable adjustment to average out the employee's salary prior to their redeployment to ensure that they get a fair entitlement.
3. Firefighters can only leave the scheme through retirement or resignation - the employer cannot remove them for any other reason (the intention of the September amendments was to enable firefighters to remain in the scheme, not to remove them)
4. Protection may be required for both pension value and pay - the latter is a matter for the individual Fire Authority.

Fire Services should not use the DDA to try and keep firefighters who qualify for ill-health retirement and want to take it. A good practice approach should be taken which aims to ensure that the firefighter's wishes are fully taken into account in any decision making process.

Use of medical advice

Under Rule H1, the Fire and Rescue Authority must seek the written opinion of an independent qualified medical practitioner when determining whether a person is permanently disabled for the purposes of deciding any award due. However, any decision about the future of the firefighter in the Service should be made on medical evidence and with consideration of reasonable adjustments. The Fire and Rescue Service should ensure that they:

- Always fully consider what reasonable adjustments can be made.
- Adopt a good practice approach to health conditions and disabilities that arise during a firefighter's career.

Qualifying injuries

Rule A9 of the Firefighters' Pension Scheme defines a qualifying injury as "an injury received by a person without his own default in the execution of his duties as a regular firefighter".

This provision is an additional protection for firefighters who are injured on duty.

For the purposes of the DDA, it does not matter how a person got their disability, the same duties apply. A problem might arise if Fire Services were to take the view that they only had to comply with DDA duties if the person became disabled because of a duty-related injury, rather than for any other reason.

EXAMPLE:

A firefighter whose partner died and who experiences depression as a result wouldn't qualify for an injury award because their mental health condition is not related to the execution of duties. This is acceptable, as long as the Fire and Rescue Authority does not assume that because a person's disability was either the result of something a person did, or was not gained at work, the DDA duties do not apply.

EXAMPLE:

A firefighter does not properly check that equipment is properly stored back in the appliance after attending an incident. When they arrive back on station, and take the equipment out of the appliance to check it is safe, they injure their hand. This injury results in them losing the use of the hand. The disabled person should still expect to be disciplined for this neglect of duty, but the disciplinary process and any subsequent decisions that are made about their future in the Service must take account of the DDA duties. (For more on dealing with discipline and disabled firefighters see section 7).

Appeal against opinion on a medical issue

Rule H2 Part I of Schedule 9 of the Firefighters' Pension Scheme sets out the appeals procedure to be used when a medical opinion has been sought about a firefighter and they disagree with the opinion.

Any appeal must relate to dissatisfaction with the medical opinion. In considering whether a person is disabled and any disablement is likely to be permanent, the Fire Service and the medical practitioner will need to consider whether, if a person is disabled, reasonable adjustments can be made. If reasonable adjustments can be made, any disablement will not be considered permanent for the purposes of the pension scheme.

The Fire Service might need to consider the medical issues in two stages:

- (1) whether a firefighter is disabled for firefighting duties and
- (2) whether they are unfit for any other duties appropriate to the role.

Any questions around making reasonable adjustments should be resolved using the informal disputes resolution procedure in the first instance.

Grounds of appeal

A firefighter can appeal against a medical opinion where a medical practitioner certifies them as "permanently disabled" or "not permanently disabled". The medical practitioner in reaching their conclusion would need to consider whether reasonable adjustments could be made. On appeal, the Board of Medical Referees would need to consider the evidence and take reasonable adjustments into account when making a decision on the appeal. If reasonable adjustments can be made the person will not be "permanently disabled" for the purposes of the Firefighters' Pension Scheme and will not be entitled to ill-health and injury pensions.

If a firefighter considers that the Service had not fully complied with its duties under the DDA, they should seek redress through any internal grievance or dispute resolution procedures first before seeking to issue tribunal proceedings

Appeals Process

The appeals process provides an opportunity for the Fire Service to comply with its DDA duties, provided that issues are approached in the correct manner.

1. A firefighter's right of appeal against a medical opinion requires them to provide written details of their grounds of appeal. This might pose difficulties for some firefighters, for example, those with dyslexia. The appeals process does allow for a firefighter to be assisted to lodge and conduct their appeal. The Service should make sure that if a firefighter has difficulty lodging a written appeal, consideration has been given to making reasonable adjustments to assist the firefighter. This might be allowing a union or other representative to assist the firefighter to write down the required information.

2. The Firefighters' Pension Scheme provides that a "fire authority may require the appellant to pay such sums as they think fit, not exceeding the board's total fees and allowances..." when an appeal is cancelled within ten days of the hearing. In exercising this discretion, the Fire Authority would have to act reasonably. This would mean that if a firefighter was unable to attend the hearing because of their disability, the Service would need to act reasonably and exercise its discretion to ensure that the firefighter was not charged if the reason for non attendance was disability-related. It may be reasonable for the Service to ask for a GP's report or other medical report to verify this.

Section 11 Monitoring Disability in the Workplace

MAIN POINTS:

- Fire and Rescue Services should monitor numbers of disabled firefighters and other employees in preparation for the introduction of the Public Sector Duty on Disability Equality (due 2006 - 2007).
- Fire and Rescue Services should ensure that any monitoring exercise is done to help the service improve its track record on employing disabled people.
- Fire and Rescue Services should develop a culture which empowers disabled firefighters to feel confident about making a voluntary disclosure about any disability or long term health condition.
- Fire and Rescue Services should encourage disabled firefighters to network with each other.

Monitoring of employees is an important way of determining whether anti-discrimination measures taken by the Fire and Rescue Service are effective in ensuring that disability equality is a reality within the Service. Information must be gathered sensitively, with appropriately worded questions, and confidentiality must be ensured.

Monitoring will be more effective if firefighters (or job applicants) feel comfortable about disclosing information about their disabilities and long-term health conditions. This is more likely to be the case if the Fire Service explains the purpose of the monitoring and if firefighters or job applicants believe that the Fire Service genuinely values disabled firefighters and is using the information gathered to create positive change.

For example, a Fire Service notices through monitoring that the organisation has been successful at retaining most groups of disabled people where possible, but not people with mental health conditions. It acts on this information by contacting a specialist organisation for advice about good practice in retaining firefighters with mental health conditions.

The DRC will be issuing guidance on employment monitoring.

Support networks for disabled firefighters

One practical way that the Fire Service can help disabled firefighters to feel more involved and confident in their work in the Fire Service is to establish a disabled firefighters' support network. Some key elements of such a network would be:

- **To provide a safe forum in which firefighters can discuss issues without fear of recourse to managers or medical advisers,**
- **A means of gathering the experiences of disabled firefighters and of using them to feed back positively to development of policy and training for firefighters.**
- **A forum for discussing or testing out ideas proposed by Fire Service management to improve diversity and equality in the service generally.**
- **A forum in which members could discuss measures to improve the delivery of services to disabled people in the wider community (for example, by contributing towards a more effect integrated risk management plan).**

- **A means by which Fire Service managers could inform disabled firefighter's of issues that may affect them specifically**

In order for this type of network to be effective, the DRC recommends that a number of conditions must be in place:

- **The network must have some funding to pay for costs of attending meetings or for any required reasonable adjustments for firefighters, such as communication support.**
- **Firefighters should be allowed reasonable time to attend meetings and not be expected to use their own time to attend. Obviously operational requirements will need to be considered but provisions should be made to account for this.**
- **The network must have some administrative support dedicated to it, for example to arrange meetings, take forward actions, etc.**
- **The network meetings must be held in an accessible venue (e.g. a venue that provides good physical access for disabled firefighters).**

An effective disabled firefighters' network could be a real asset to a Fire Service.

Section 12 Further Sources of Advice and Help



Useful DRC publications

All the publications listed below are available from the DRC's Helpline. Many of the DRC's publications can also be downloaded free from the website.

DRC Helpline:

Tel: 08457 622633

Textphone (minicom): 08457 622644

Fax: 08457 778 878

Email: Please use the email enquiry form on our website.

Post: DRC Helpline
Freepost MID02164
Stratford upon Avon
CV37 9BR

DRC website: www.drc-gb.org

1. Statutory Code of Practice on Employment and Occupation
2. Review of UK case law on the use of Health and Safety requirements as a false excuse for not employing sick or disabled persons (DRC/HSE research)
3. Good Practice Training Directory - contains listings of organisations that provide training on disability issues.
4. Guidance on matters to be taken into account in determining questions relating to the definition of disability

Publications from the Employer's Forum on Disability

Employers Forum on Disability

Nutmeg House

60 Gainsford Street

London

SE1 2NY

Tel: 020 7403 3020

Fax: 020 7403 0404

Textphone: 020 7403 0040

All the publications below are available to order from the forum's website: www.employers-forum.co, there is a cost attached to them.

- a. Solutions at work - a practical guide to managing disability

This publication collates guidance issued by the forum over the last seven years and has lots of useful information for employers.

b. Recruitment that works - enhancing your workforce through partnership

This publication gives some general advice on good recruitment practice.

c. Promoting change

A publication aimed at policy makers and those seeking to change an organisation's attitude to disability and disabled people.

Disability Training Providers

There are many organisations that can provide training on disability and the DDA. The listing of those below does NOT imply endorsement by the DRC of the quality of any of their services.

The Centre for Independent Living in Glasgow (CILIG)

117-127 Brook Street,
Glasgow
G40 3AP

Telephone 0141 550 4455
Textphone 0141 554 6482
Fax 0141 550 4858
Email cilig@cilig.co.uk
Website www.cilig.co.uk

Changing Faces - Disability Equality Training

1 & 2 Junction Mews,
London W2 1PN

Telephone 020 7706 4232
Fax 020 7706 4234
Email info@changingfaces.co.uk
Website www.changingfaces.co.uk

<p>Churchill & Friend</p> <p>Weltech Centre Trust, Ridgeway, Welwyn Garden City, Herts AL7 2AA</p> <p>Telephone 01707 324466 Fax 01707 324432 Email office@churchillandfriend.com Website www.churchillandfriend.com</p>	<p>Disability Matters Limited (DML)</p> <p>The Old Dairy, Tiebridge Farm, North Houghton, Stockbridge SO20 6LQ</p> <p>Telephone 01264 811120 Fax 01264 810889 Email disabilitymatters@compuserve.com Website www.disabilitymatters.com</p>
<p>Greater London Action on Disability (GLAD)</p> <p>336 Brixton Road, London SW9 7AA</p> <p>Telephone 020 7346 5814 Textphone 020 7326 4554 Fax 020 7346 8844 Email info@glad.org.uk Website www.glad.org.uk</p>	<p>Scottish Equality Awareness Trainers in Disability (SEATID)</p> <p>Old Mill Studios, 187 Old Rutherglen Road, Glasgow G5 0RE</p> <p>Telephone 0141 429 2535 Fax 0141 429 2588 Email ptc@seatid.freeseve.co.uk Website www.seatid.freeseve.co.uk</p>
<p>Centre for Accessible Environments</p> <p>70 South Lambeth Road London SW8 1RLUK</p> <p>Tel/textphone:(+44) 020 7840 0125 Fax:(+44) 020 7840 5811 Email: info@cae.org.uk Web site http://www.cae.org.uk/</p>	<p>Access Matters Limited</p> <p>The Portway Centre, Old Sarum, Salisbury SP4 6EB</p> <p>Telephone 01722 435 613 Fax 01722 435 601 Email enquiries@accessmattersltd.co.uk Web site www.accessmattersltd.freeney.co.uk</p>

Capability Scotland

ASCS (Advice Service Capability
Scotland)
11 Ellersly Road
Edinburgh
EH12 6HY

Tel 0131 313 5510
Fax 0131 346 1681
Textphone 0131 346 2529
Email
ascs@capability-scotland.org.uk
Website
www.capability-scotland.org.uk

Disability Wales

Wernddu Court,
Caerphilly Business Park,
Van Road
Caerphilly,
CF83 3ED

Helpline 0800 731 6282
Tel 029 2088 7325
Fax 029 2088 8702
Email info@dwac.demon.co.uk
Website www.dwac.demon.co.uk

Access Matters Ltd

Wykeham House
Petersfield Road
Ropley
Alresford
Hampshire
SO24 0EF
Tel: 01962 773899
Fax 01962 772629
Email: Web@AccessMatters.com
Web:
www.accessmatters.com/index.html

List of specialist disability organisations and services

Access to Work

Your local Access to Work Team should be contacted through the Disability Employment Adviser based at your local jobcentre. There is also a website that provides some information but Services would be advised to talk directly to their local team.

www.jobcentreplus.gov.uk

Signers and Sign Language Interpreters

<p>Royal National Institute for the Deaf</p> <p>Head Office 19-23 Featherstone Street London EC1Y 8SL</p> <p>Freephone 0808 808 0123 Freetext 0808 808 9000 Tel 020 7296 8000 Fax 020 7296 8199 Text 020 7296 8001 Email informationline@rnid.org.uk Website www.rnid.org.uk</p>	<p>Council for the Advancement of Communication with Deaf People (CACDP)</p> <p>Durham University Science Park Block 4 Stockton Road Durham DH1 3UZ</p> <p>Tel 0191 383 1155 Text 0191 383 7915 Fax 0191 383 7914 Email durham@cacdp.org.uk Website www.cacdp.org.uk</p>
<p>Scottish Association of Sign Language Interpreters (SASLI)</p> <p>Donaldson's College West Coates EDINBURG HEH12 5JJ</p> <p>Tel 0131 347 5601 Text 0131 347 5601 Fax 0131 347 5628 Email mail@sasli.org.uk Website www.sasli.org.uk</p>	<p>Wales Council for the Deaf</p> <p>Glenview House Courthouse Street Pontypridd CF37 1JY</p> <p>Tel 01443 485687 Text 01443 485686 Fax 01443 408555 Email wcdeaf@freenet.co.uk Website www.wcdeaf.org.uk</p>

<p>British Deaf Association</p> <p>Head Office1-3 Worship Street London EC2A 2AB</p> <p>Tel 020 7588 3520 Text 020 7588 3529 Fax 020 7588 3527 Videophone 020 7496 9539 Email helpline@bda.org.uk Website www.bda.org.uk</p>	<p>Palantype Services Ltd</p> <p>11 Chapel Place Rivington Street LONDON EC2A 3DW</p> <p>Tel 020 7749 9100 Fax 020 7613 5806 Email info@ubiquus.com Website www.ubiquus.co.uk</p>
<p>City Lit Centre for Deaf People</p> <p>16 Stukeley Street London WC2B 5LJ</p> <p>Tel 020 7383 7624 Text 020 7380 0416 Fax 020 7380 1076 Email cfdp@citylit.ac.uk Website www.citylit.ac.uk</p>	<p>Hearing Concern</p> <p>4th Floor275-281 King Street London W6 9LZ</p> <p>Helpdesk 0845 074 4600 (voice and text) Tel 020 8743 1110 Text 020 8233 2934 Fax 020 8233 2934 Email info@hearingconcern.org.uk Website www.hearingconcern.org.uk</p>
<p>Advice on Building Accessibility British Standards Institution</p> <p>389 Chiswick High Road London W4 4AL</p> <p>Tel 020 8996 9000 Fax 020 8996 7001 Email info@bsi-global.com</p>	<p>Centre for Accessible Environments</p> <p>Nutmeg House 60 Gainsford Street London SE1 2NY</p> <p>Tel 020 7357 8182 Text 020 7357 8182 Fax 020 7357 8183 Email info@cae.org.uk Website www.cae.org.uk</p>

<p>Disabled Living Foundation</p> <p>380-384 Harrow Road London W9 2HU</p> <p>Helpline 0845 130 9177 Tel 020 7289 6111 Text 020 7432 8009 Website www.dlf.org.uk</p>	<p>Institution of Highways and Transportation</p> <p>6 Endsleigh Street London WC1H 0DZ</p> <p>Tel 020 7387 2525 Fax 020 7387 2808 Email info@iht.org Website www.iht.org</p>
<p>Braille Documents</p> <p>Royal National Institute for the Blind (RNIB)</p> <p>Head Office 105 Judd Street London WC1H 9NE</p> <p>Helpline 0845 766 9999 Tel 020 7388 1266 Text 0845 585691 Fax 020 7388 2034 Email helpline@rnib.org.uk Website www.rnib.org.uk</p>	<p>RNIB Scotland</p> <p>Head Office Dunedin House 25 Ravelston Terrace Edinburgh EH4 3TP</p> <p>Tel 0131 311 8500 Fax 0131 311 8529 Email rnibscotland@rnib.org.uk Website www.rnib.org.uk/scotland</p>
<p>Scottish Braille Press</p> <p>Craigmillar Park Edinburgh EH16 5NB</p> <p>Tel 0131 662 4445 Fax 0131 662 1968 Email enquiries@scottish-braille-press.org Website www.scottish-braille-press.org</p>	<p>Wales Council for the Blind</p> <p>3rd Floor, Shand House 20 Newport Road Cardiff CF24 0DB</p> <p>Tel 029 2047 3954 Fax 029 2043 3920 Email staff@wcbnet.freemove.co.uk Website www.wcb-ccd.org.uk</p> <p>M60 3XN Tel: 0845 766 0163 Email: info@mind.org.uk Website: www.mind.org.uk</p>

<p>MIND (Mental Health Charity)</p> <p>PO Box 277 Manchester</p>	<p>Diabetes UK</p> <p>10 Parkway London NW1 7AA</p> <p>Tel: 020 7424 1000 Fax: 020 7424 1001 Email: info@diabetes.org.uk Website: www.diabetes.org.uk</p>
<p>Epilepsy Action</p> <p>New Anstey House Gateway Drive Yeadon Leeds LS19 7XY</p> <p>Tel: 0113 210 8800 Fax: 0113 391 0300 Email: epilepsy@epilepsy.org.uk Website: www.epilepsy.org.uk</p>	<p>RADAR (Royal Association for Disability and Rehabilitation)</p> <p>12 City Forum 250 City Road London EC1V 8AF</p> <p>Tel 020 7250 3222 Text 020 7250 4119 Fax 020 7250 0212 Email radar@radar.org.uk Website www.radar.org.uk</p>
<p>The Dyslexia Institute</p> <p>Park House Wick Rd Egham Surrey TW20 0HH</p> <p>Tel: 01784 222300 Fax: 01784 222333 Email: nfo@dyslexia-inst.org.uk Web: www.dyslexia-inst.org.uk</p>	<p>The International Register of Firefighters with Diabetes (UK)</p> <p>8 Donnington Rd Willesden London NW10 3QN</p> <p>Tel: 0208 451 1418 Fax: 0208 07750 038346 Email: irfduk@globalnet.co.uk Web: www.users.globalnet.co.uk/~irfduk/index.htm</p>

Other Organisations

ACAS

Can provide advice on issues relating to employment

ACAS confidential helpline:

08457 47 47 47

08456 06 16 00 - **Textphone users**

Department for Trade and Industry

DTI Enquiry Unit
1 Victoria Street
London SW1H 0ET

020 7215 5000 or 020 7215 6740 (Minicom)

dti.enquiries@dti.gsi.gov.uk

OPAS - The Pensions Advisory Service

Can provide advice on the whole spectrum of pension schemes.

Telephone: 08456 012923

Fax: 0207 233 8016

Email: enquiries@opas.org.uk

Website: www.opas.org.uk

The Pensions Ombudsman

Telephone: 0207 834 9144

Fax: 0207 821 0065

Email: enquiries@pensions-ombudsman.org.uk

Website: www.pensions-ombudsman.org.uk

Books and Articles

The list below might provide useful background reading, or materials for training purposes.

'One more last working class hero - a cultural audit of the UK Fire Service
Dr. Dave Baigent GFireE BA (hons)

www.fitting-in.com/baigent.pdf and www.fitting-in.com/baigentapp.pdf

'The extent of use of health and safety requirements as a false excuse for not employing sick or disabled persons'

By Hurstfield J, Allen B, Ballard J, Davies J, McGeer P and Miller L

IRS Research Report 167 published by the DRC and the Health and Safety Executive 2003, available from HSE books

Section 13 Concepts of Disability

- Medical Model
- Social Model

Concepts of Disability

There are essentially 'two' concepts of disability. Section 1 of the DDA briefly outlines the definition of disability used in the DDA. This definition is mainly a "medical model" of disability, i.e. seeing the disabled person as having "something wrong with them" rather than a "social model" i.e. focusing on institutional and other barriers to participation and achievement.

There is a difference between illness and disability. Some disabled people may have a condition which means that they have associated health problems, for example someone with MS may experience fatigue, muscle or joint pain or other problems. However, some disabled people have a disability that does not affect their health, for example a person with a visual or hearing impairment will be perfectly 'healthy'.

The medical model has been defined by P Scullion as:

"This remains the dominant view within health care and is closely associated with the historical view. People's differences, in terms of stature, levels of vision, hearing, mobility or intellectual capacity, have, to a large extent become medicalised. They have come to be seen within the remit of the medical profession, giving people whose characteristics fall outside of a statistical norm a 'perpetual patient status'. The cause of disability is seen primarily as the individual's impairment. The restrictions disabled people experience in terms of life chances, housing, employment, recreation, education and participation in the social life of a community, are attributed to their impairments. The problem remains an individual one. It may be viewed as tragic if someone has a congenital, or, more commonly, an acquired impairment. The medical model has been described as an 'individual personal tragedy model'.

This is not to claim that health professionals set out to dominate the lives of disabled people but rather that medicalised ideas have a pervading influence on life" .

The DRC advocates the '**social model**' as an ideal. The social model of disability has been defined by P Scullion as:

"The social model of disability advocates that rather than explaining restriction in terms of the individual's impairment, society itself is seen as having a powerfully disabling effect on the lives of people with a range of impairments. Barriers that impede the independence of people with differences are seen as the problem, rather than the person's impairment".

Scullion identified these barriers as:

- Systems and organisations that operate in ways that do not take account of human difference.
- Public policies
- Negative attitudes towards disabled people
- Discrimination
- Physical barriers in the built environment
- Economic barriers
- Barriers of communication

In part, these stem from dominant able-bodied thinking which has far reaching consequences. Information is available in dominant media only, excluding people whose first language is British Sign Language. New buildings, even health service premises, have inaccessible entrances leaving some disabled people with no choice than to select a health centre or dentist solely on the basis of physical accessibility.

Organisations of disabled people and politically aware individuals, collectively known as the 'disability movement' have been instrumental in promoting the social model of disability.

Almost inevitably, adherence to the social model, with its demand for 'rights not charity', will bring some tension between organisations involved in the field of disability and some disabled people. In criticising health policy and health and welfare services, disabled people may appear to be biting the hand that feeds, yet in spite of this, Department of Health policies (1999) have endorsed the view that the medical model of disability has itself hindered disabled people.

Community nurses and health visitors who dare to explore the social model may well find that their thinking, and their practice, is challenged. Albrecht and Verbrugge (2000) warn that: "Debates that counterpose medically oriented and socially oriented models are often very heated, not just for reasons of intellectual difference, but also for reasons of experience credentials" .

Section 14 Disability Facts

- Facts and Figures to Assist Training and Awareness

Disability Facts

To help with training, planning and general awareness, below are some basic statistics on disability that may come in useful. These figures are based on the Labour Force Survey (LFS) Summer 2003, Great Britain.

- There are around 10 million adults in Great Britain who meet the definition of disability in the DDA, just over one in five of the adult population.
- Scotland is estimated to have almost 1 million (0.9 million) disabled people likely to be covered by the DDA.
- Wales is estimated to have 0.7 million people likely to be covered by the DDA.
- Disability rates increase with age. Some 10 percent of adults aged 16-24 were disabled in summer 2003 but this proportion increased to over one third in the 50 to retirement age category.
- Disability rates vary markedly across countries and regions, from 16 percent in London to 23 percent in Wales and 25 percent in the North East of England.
- Over the past five years, employment rates for disabled people have increased gradually (by 4 percentage points between 1998 and 2003). However, in summer 2003 disabled people were still only about half as likely as non-disabled people to be in work.
- One third of disabled people who are out of work say they would like to work, compared with one quarter of non disabled people.

Section 15 Real Fire Service Case Examples & Case Law

- Examples of "Real" fire service case examples

Note : Further examples will be issued from time to time as identified and should be filled in this section

Real Fire Service Case Examples

This section details some more case examples. They have been grouped into sections depending upon the type of issue concerned. Where there is a DRC case reference, this is a real case that the DRC has taken. More information on these can be found on the DRC's website. Where cases were settled prior to coming before an Employment Tribunal, it is often the case that the employer conceded some errors in aspects of its conduct, and wished to settle the case to avoid adverse publicity.

A. Real Fire Service Examples

The cases in this section are real life examples from Fire Services. It is hoped that more cases can be included in this section before the final version of the guidance is issued.

Case 1

Duncan White, a Watch Manager with 17 years service, discovered his hearing appeared to be deteriorating. Due to the uncertainty surrounding the problem Duncan decided to explore the cause of his problem without informing the Fire Authority as he feared the implications of doing so. Following private medical consultations it was identified that the cause of the impairment was as a result of a condition called Otosclerosis and also Noise Induced Hearing Loss. The condition Otosclerosis is operable although the Consultant advised against it, due to a 1% risk of total deafness, instead recommending the use of hearing aids.

Having identified the problem Duncan then set about finding a solution to his condition and worked closely with a local Hearing Aid Specialist and Access to Work. The cost of providing four digital hearing aids (two 'in the ear' and two intrinsically safe) was approximately £8000 (before discounts). Duncan made an application to Access to Work which was subsequently agreed and the funding made available. Access to Work agreed to pay 80% of the costs of the hearing aids, and the overall cost to Somerset Fire and Rescue Service would be about £1500.

At this point, Duncan informed the Fire Authority of his condition and presented them with the solution to his problem. Following a policy meeting of the Principle Management Board, the Fire Authority agreed to fund the hearing aids. In reaching this decision a cost versus benefit analysis had been carried out which confirmed that it was more beneficial to pay the £1500 and

keep Duncan in his operational role than to retire him on ill health grounds, thus losing his expertise and incurring much higher costs with regard to ill health retirement payments.

Consultations with the Services Occupational Health Advisor resulted in vocational tests being created to ensure that the aids provided the correct level of hearing required for Duncan to perform safely in all aspects of his role. This was very easily achieved and Duncan is looking forward to completing the next fifteen years of his Service and retiring as normal.

This is an example of good practice but it also demonstrates that there is a need for Fire and Rescue Services to exchange expertise about making reasonable adjustments.

Case 2

Deputy Chief Fire Officer Graham Maltby, Staffordshire Fire and Rescue Service, has been in the Fire and Rescue Service for 31 years. In March 2002, Graham was diagnosed with Non-Insulin Dependant Mellitus (NIDDM) maturity onset type 2 diabetes. This illness develops gradually and occurs when the pancreas fails to produce (hormone chemical) to break down glucose (sugar) in the blood or the body is unable to use the insulin properly. NIDDM is known to affect 2 in 100 people in the UK and usually develops in the population over 40 of age years and is linked to such indicators as family history of the disease. It is also stated that as many people in the UK have the illness that are currently exhibiting little or no symptoms. Graham states, "I was on the BCC interphase study period at home when fatigue and thirst became an issue for me. I have a family history of NIDDM and was due an assessment to the well-men's clinic at my local medical centre and asked them to carry out a glucose blood test. The results came as no surprise and within ten days I had been subjected to further medical tests, a diagnosis made and a treatment regime of diet control glucose and eye testing completed. I was instructed go keep blood glucose levels between 4 and 9. In conjunction with the General Practitioner, Medical Centre Diabetic Nurse and Occupational Health Advisor (OHA) at Staffordshire Fire and Rescue Service (SF&RS)".

Graham's occupational risks were assessed, treatment measures put in place and regular medical checks implemented through his medical centre. Graham added

"My real concern was not the changes to my diet and fitness regime but the fact that whilst my duties are mainly of an administrative function, that occasionally at major incidents, I am responsible for command decisions that

have the potential to affect firefighter safety and successful outcomes. Our Occupational Health Adviser explained how to keep glucose levels within limits to allow normal functioning along with the risks associated with heat stress and hypoglycaemia (low glucose levels)".

Graham also knows the signs and symptoms of low glucose levels and how to avoid them, and what to do if they start to occur. In summarising his illness Graham says,

"My advice to anyone with any type of disability is to learn about your illness in detail, understand the risks and how to mitigate them. Discuss openly with colleagues your disability so they know your problem and the limits that you can safely operate, and with a degenerative illness like mine conform with the guidelines such as diet, regular glucose tests and assessments, eye tests, flu and pneumonia jabs to give you every and the best chance of living a long full and active life"

Case Law

- * Examples of case law to assist Fire Service Managers
- * Assist in training and raising awareness

Note:

Further examples will be issued from time to time as identified and should be filled in this section

Reasonable Adjustments

DRC/01/4743

Summary: The client has had epilepsy since childhood but had remained free of seizures for 10 years whilst working on the day shift as a security guard. His employers were aware of his condition and had originally transferred him to the day shift after he had experienced seizures whilst working on the night shift. The client was unaffected by the effects of his condition when working on the day shift, but despite this fact the employer transferred him on to the night shift to cover for absent work colleagues. He experienced further seizures as a result leading to sickness absence. When he attempted to return to work the employer refused to redeploy him into a day shift role and decided to terminate his employment. Employment Tribunal proceedings claiming disability discrimination were commenced.

Outcome: In the substantive Hearing on 22 March 2002, the client was successful in all aspects of his claim, the Tribunal holding that he had been unlawfully discriminated against because of his disability. Terms of settlement were agreed before the remedy hearing was due to take place

DRC/01/524 (Ellis -v- Ideal for All Ltd ET Case No: 5204107/2001)

Summary: The client has cerebral palsy and a learning disability. He worked part time in supported employment. His salary was funded 60% by his employer and 40% by the charity SCOPE. He was made redundant in 2001; a decision he challenged as being discriminatory because of his disability.

Outcome: During a 3 day hearing the respondents put forward a number of arguments for terminating the client's employment including lack of funding, redundancy and competency none of which were correct or accepted by the tribunal. Consequently, the Employment Tribunal found that the respondents had unlawfully discriminated against him in that they failed to consider reasonable adjustments that would have enabled him to remain in employment. In relation to remedy it was agreed that the schedule of loss prepared by the Commission was acceptable and the client received damages of £15,710.

DRC/02/5470

Summary: F had psoriasis, a condition that particularly affected his feet. As a consequence of this, he could not wear safety boots in his job as a warehouseman performing, from time to time, fork lift driving duties. During an investigation into a workplace accident involving F, the local authority health

and safety officer discovered F was not wearing safety boots and instructed his employers to ensure that he did, otherwise he could not be employed in the warehouseman position. The health and safety officer asserted that health and safety legislation relating to personal protective equipment imposed duties on the employer to ensure F wore safety footwear in a hazardous working environment. If the local authority discovered subsequently that F was working without wearing safety footwear the employer risked being the subject of legal enforcement action in this regard.

The employer exhaustively investigated safety boots that would not aggravate F's condition, but nothing suitable could be found. There were no other suitable alternative positions available for F. The employer dismissed F and F subsequently commenced proceedings in the Employment Tribunal against both the employer and the local authority. The Employment Tribunal concluded health and safety legislation did not intend to discriminate against disabled people. In this case the employer had failed to carry out an individual risk assessment (which was not carried out in this case) balancing the consequences of dismissal as opposed to the risks of working without wearing safety equipment. If this had been recommended by the local authority health and safety officer (in accordance with advice received from a national safety advisory agency) it was likely F would have been allowed to choose to work knowing full well the risks associated of not wearing safety footwear. Accordingly, the decision to dismiss constituted unlawful disability discrimination and the local authority was liable for knowingly aiding an unlawful act. Both the employer and local authority appealed this decision to the EAT.

Outcome The appeals of both the employer and local authority succeeded before the EAT. The EAT decided section 59 DDA provided a defence to F's claim of disability discrimination based on statutory authority deriving from health and safety legislation concerning personal protective equipment. In the alternative, the employer had properly arrived at the conclusion no reasonable adjustments could be made and the eventual dismissal was justifiable. The Court of Appeal has granted F permission to appeal against the EAT judgement.

In **Wearing v Millar** an engineer/fitter had a record of safe work with his previous employer despite his epilepsy. He also supplied specialist medical reports certifying his fitness to work subject to restrictions. His appointment was withdrawn following a risk assessment conducted by the employer's own engineers. The tribunal found the assessment to be perfunctory, lacking in independence and done on the basis of insufficient medical evidence. It could not find a material and substantial reason

Retention

In **Fielden v Edenfield Soap & Toiletries Ltd**: F was dismissed from his job as a factory cleaner because of his high accident record, assumed to be related to his insulin dependent diabetes. F had explained that he would need a few months to adjust his sugar control levels in accordance with the demands of the job. He experienced a few hypoglycaemic episodes at work and had been observed unsteady on his feet. His employer decided that F posed a health and safety risk to himself and other employees and dismissed him, citing its legal responsibility to ensure a safe system of working. The employer failed to consult F before concluding that his accidents were related to his condition. Neither had it had undertaken a risk assessment or sought medical advice in reaching its decision that F posed an unacceptable risk to his own safety and that of others. It could not show that its reason for dismissal was material to the circumstances of the particular case and substantial.

Sheen v BIZ Engineering Ltd illustrates a common flaw in the health and safety reasons put forward by employers. S's job entailed welding and cutting metals using potentially dangerous machinery. He was diagnosed with Parkinson's Disease, but this was well controlled by medication and he continued to work for some years. His productivity was, however, lower than that of other employees as was the quality of his work. S was taken off welding work and reluctantly took early retirement. The tribunal held that, although it had acted for benevolent reasons, S's employer had made a general assumption that Parkinson's Disease had reduced his productivity and put his safety at risk. Although it had received some occupational health advice, it had not sought specific medical evidence or discussed working arrangements with S. "In failing to make an individual approach to Mr Sheen's case...the Respondent failed to apply themselves to the particular circumstances and therefore the justification argued was not material to the circumstances of the particular case."

Archibald v Fife Council. House of Lords, 2004 UKHL 32.

Mrs A worked as a road sweeper with Fife Council from May 1997 until March 2001. In April 1999 complications following surgery caused severe pain in her heels, leaving her unable to walk. She initially used a wheelchair and later was able to walk only with sticks. She had previously worked as an administration assistant and went for retraining to update her skills. She had to undertake competitive interviews in accordance with the council's redeployment policy and applied unsuccessfully for over 100 posts within various departments. In March 2001, the council dismissed her on the grounds of capability. Mrs A complained she had been discriminated against on grounds of disability. She argued she should not have had to compete for

alternative employment if she could show she could perform the duties and responsibilities of the post and that her employers had failed to comply with a duty to make a reasonable adjustment under section 6 of the Disability Discrimination Act. An employment tribunal dismissed her complaint, stating Fife Council had not failed to comply with any duty of reasonable adjustment. The Employment Appeal Tribunal dismissed an appeal, holding there was, in fact, no duty of reasonable adjustment on the employers at all.

The DRC appealed to the Court of Session who ruled that an adjustment duty was not triggered by becoming physically incapable of carrying out the job and that transfer to a different job was not a reasonable adjustment. The DRC then appealed to the House of Lords who unanimously ruled that there is a duty on employers to make reasonable adjustments for disabled people if they become unable to carry out the job they are in due to their disability. This duty includes considering whether it is reasonable to transfer the disabled person to another suitable vacant position even if this position is at a higher grade, without requiring the disabled person to compete for the job through open recruitment.

Discipline and Grievance

DRC/01/128

Summary: The client was employed for eight months as an administration assistant by a government agency. Her employer transferred her to a workplace closer to her home in order to reduce the difficulty she experienced when travelling on account of her condition, which they were aware of. However, the client was accused of dishonesty in failing to answer positively to a question on the employer's health declaration form relating to reasonable adjustments, which placed the emphasis on disabled employees to identify their needs when commencing employment. The employer subsequently failed to take steps in the new workplace to prevent the disadvantage the client experienced in respect of lifting duties. The client as a result took extended sickness absence during which she was dismissed.

Outcome: Case settled and a payment was made to the claimant.

DRC/00/922

Summary: The client's job involved laying slabs, concreting and laying tarmac. A couple of years into his job he was advised by his GP that, due to his condition, he should not lift heavy objects because he risked becoming blind. His employer provided him with lighter working duties for approximately one year, but after this period he was allocated heavy lifting work duties again. Once again, he informed his employer of the advice he received from his GP. The employer sought a report from the client's GP, who confirmed the risk associated with heavy lifting work and recommended the client should not lift any weight over the 15kg to 20kg range. The employer terminated the client's

employment after receiving this report. The employer claimed that they could no longer employ the person because of health and safety issues. They claimed that as the job had to involve heavy lifting, there was no adjustment they could make to the job and adhere to health and safety legislation.

Outcome: The case was settled and a payment was made to the claimant.

Meilke v Nottinghamshire County Council

The client, who was a teacher at Gedling School in Nottingham developed a disability when her sight degenerated in 1993. When this took place, she asked her employer to make adjustments for her at work. These involved enlarging written materials and allowing her to take on extra non-teaching hours for marking and class preparation. However these improvements were not made and consequently she went on sick leave. She was then suspended and eventually forced to resign in May 2000. The Court of Appeal found that the client was constructively dismissed and should have received full pay not sick pay when she suffered her sight loss. The case sets the precedent that constructive dismissal is covered by the Disability Discrimination Act (DDA). Constructive dismissal arises when the employer is directly responsible for behaving in a way that entitles an employee to resign, as Mrs Meikle did. In Mrs Meikle's case, it was accepted that she was entitled to resign because of her employer's persistent failure to make reasonable adjustments, and that this amounted to a constructive unfair dismissal as well as unlawful disability discrimination. The case also set the precedent that payments of sick pay by employers are subject to the duty to make reasonable adjustments. So not only do employers have to make reasonable adjustments, but the Meikle case has also established that they will have to pay sick pay under the DDA when they fail to do so, if the consequence is that the disabled person is unable to work because adjustments have not been made. In future, when a disabled employee is on long-term sick leave or at risk of a cut in pay, the onus will be on employers to provide cogent justification for not maintaining full pay for the period of absence.

DRC/00/020.

Summary: The client was diagnosed with Bipolar Affective Disorder. Her condition is adequately stabilised with medication. In April 2000 the client was dismissed from her employment for what her employer described as 'gross misconduct' after she had a mental breakdown at work and was admitted to hospital. The client considered that her employer had discriminated against her by terminating her employment for a reason relating to her disability (i.e. dismissing her when she broke down at work) and failing to make reasonable adjustments to accommodate her particular needs.

Outcome: The Employment Tribunal held that client had been unlawfully treated less favourably because of her disability but did not rule that it was an appropriate case for the Respondent to make reasonable adjustments. At the Remedies Hearing on 23 July 2001 the Respondent was ordered to pay the total sum of £23,069.80 including an award of £8,000 (plus interest) for injury to feelings

DRC/00/195

Summary: The client was employed as a sign language tutor. He was alleged to have continued to work with a local organisation teaching sign language after taking sickness absence for reasons not connected to his disability, which according to his employer meant he was in breach of his contract of employment with them. The employer instituted their disciplinary procedure against the client, but they failed to provide an independent BSL interpreter at all the disciplinary hearings and did not provide the client with clear written transcripts, or minutes, of those hearings. This prevented him from being able to adequately present his case, culminating in his dismissal.

Interest: The case highlights the employers duty to make reasonable adjustments during a disciplinary process, which could provide benefit for deaf employees generally.

Outcome: The case settled for an undisclosed sum shortly before the hearing was due to take place.

DRC/01/1142

Summary: The client, who worked as a waiter at the Respondents premises, was involved in a customer service matter which led to disciplinary proceedings against him. His case was that his employer failed in its duty to make reasonable adjustments to take into account the client's learning disability and hearing impairment during the disciplinary process. His mother attended the disciplinary hearing with him. She was not best placed to assist him with the disciplinary process as she had no relevant experience. The written notes of this hearing showed that the client was placed at a disadvantage because of his learning difficulties. His verbal repetition of the allegations against him was taken by his employer to be an admission of guilt

and he was dismissed. He claimed unfair dismissal and disability discrimination.

Outcome: A substantial confidential settlement package was reached.