

Disability Rights Commission

Guidance for FBU Members on the Disability Discrimination Act



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partnership with the Fire
Brigades Union**

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The purpose of this guide

This guide has been produced in association with the Fire Brigade's Union. It is intended to provide information and guidance to the Union's representatives in the Fire Service, who will be advising their members on their rights under the Disability Discrimination Act (DDA) 1995, which will apply to Firefighters from 1st October 2004. It uses practical examples to highlight how the Disability Discrimination Act applies to firefighters.

This guide is intended to cover the basics; more details about the provisions of the DDA are contained in the DRC's Code of Practice on Employment and Occupation, available from the stationary office, or as a free download from the DRC's website www.drc-gb.org.

This guide is designed for existing members of staff. It aims to explain that acquiring or declaring a disability does not mean that a Firefighter has to take early retirement or be dismissed from their job. It gives some practical examples of ways in which the employer should enable firefighters to continue their career in the Fire Service.

Who are disabled people?

The Disability Discrimination Act 1995 (Part 1) uses a broad definition of disability that embraces people with a range of impairments. It is not always obvious that someone is a disabled person, indeed not everyone covered by the Act chooses to use this term about themselves.

Disabled people can include:

- People who are blind or partially sighted
- People who are deaf or hard of hearing
- People who have heart conditions
- People with epilepsy
- People who have problems with continence
- People who have insulin dependent diabetes
- People with back injuries
- People with dyslexia
- People who have arthritis
- People who are wheelchair users
- People who experience or have experienced mental health problems
- People with learning difficulties
- People with a severe facial disfigurement
- People with a progressive condition, e.g. cancer or HIV
- People with severe asthma

Estimates of numbers of disabled people indicate that more than one in 10 of your colleagues may have rights under the DDA.

When deciding whether a person is likely to be protected by the Act, a person must be able to show that their impairment or condition has a 'substantial, long term, adverse effect on their ability to carry out normal day to day activities'.

Substantial is defined legally as being 'more than minor or trivial'.

Long-term is defined as a condition or impairment that lasts for a 12-month period or for the rest of that person's life (i.e. if they are likely to have less than 12 months to live).

Normal day-to-day activities include:

- mobility – e.g. being able to walk to the local shop
- manual dexterity – e.g. typing
- physical co-ordination
- continence
- ability to lift, carry or otherwise move everyday objects
- speaking, hearing or seeing
- memory or ability to concentrate, learn or understand

- perception of the risk of physical danger

People who have had disabilities in the past can also be covered, provided that at the time they had their condition or impairment, it satisfied these criteria.

The following are NOT defined as disabilities:

- addiction to or dependency on alcohol, nicotine, or any other substance (unless the substance has been medically prescribed)
- the condition known as seasonal allergic rhinitis (e.g. hayfever), except where it aggravates the effect of another condition
- tendency to set fires
- tendency to steal
- tendency to physical or sexual abuse of other persons
- exhibitionism
- voyeurism

There is no longer a national registration scheme for disabled people (what used to be called the green card scheme). Disabled people can still register with their Local Authority Social Services Departments to gain access to support services, but not every person who would fit the Act's definition of a disabled person is 'registered' in this way.

There are also no quotas requiring employers to employ a certain number of disabled people. These were removed by the DDA.

What does the Act mean for firefighters?

From 1st October 2004, it will be unlawful for your employer to discriminate against a disabled firefighter because of their disability. Your employer will not be able to discriminate against a disabled firefighter:

- in the recruitment process
- in their terms and conditions of employment
- in chances for promotion, transfer, training or other benefits
- by dismissing them unfairly
- by treating them less fairly than other workers.
- by subjecting them to harassment or victimisation

Types of discrimination

There are a number of ways in which firefighters can experience discrimination:

- a. If the employer directly discriminates against a disabled firefighter on the grounds of disability
- b. If the employer fails to make reasonable adjustments for a disabled firefighter
- c. If the employer practices unjustified disability related discrimination
- d. by harassing a disabled firefighter
- e. by victimising a disabled firefighter or an employee who has been involved with a case of discrimination against a disabled firefighter

(a) Direct discrimination

This occurs when your employer (or prospective employer) directly discriminates against a disabled firefighter on the grounds of their disability.

For example: a Fire Service HR department advertises a promotion internally to its workforce. The advertisement states that 'people with a history of mental illness are not eligible for this post'. An employee who would otherwise be eligible for this promotion but who has a history of schizophrenia is likely to have a good claim of unlawful direct discrimination in relation to the promotion opportunities afforded to him/her by their employer. This is because the discrimination is directly due to the firefighter's mental health issue.

(b) Failing to make reasonable adjustments

The Fire Service as your employer (or prospective employer) needs to consider whether the employment arrangements or any physical feature of the workplace are putting disabled firefighters at a substantial disadvantage in employment.

Disabled firefighters themselves should be consulted about how their disability affects them in their work, and whether it will put them at a substantial disadvantage.

The employer then has to consider what reasonable steps can be taken to tackle the issue. The disabled firefighter should be allowed to make suggestions about how any disadvantage may be overcome, as they know most about how their disability affects them.

(c) Disability related discrimination.

Discrimination can occur when an employer indirectly discriminates against a disabled firefighter without any justifiable reason. The difference between direct discrimination and disability related discrimination is that the reason for direct discrimination is the firefighter's disability, whereas disability related discrimination is where discrimination happens because of a reason related to the firefighter's disability but is not because of the disability itself. This often happens where a general policy or practice in a Fire Service has a discriminatory effect on a disabled firefighter.

For example: a Fire Service has a rule which states that employees will be disciplined and possibly sacked if they take regular periods of sick leave. This applies to disabled and non-disabled people so it is not direct discrimination. However a disabled firefighter may be receiving unfavourable treatment as their disability means they take more sick leave than a non-disabled person. The Fire Service should not automatically count sick leave related to the person's disability against their

*general sickness absence record as this is likely to be seen as disability related discrimination. The Fire Service should look at the reasons for absence and make any reasonable adjustments necessary. This **may** include allowing the disabled firefighter to take longer periods of absence than would normally be acceptable for non disabled firefighters, or adjusting the firefighters working hours to duties to help them manage their disability.*

What sort of reasonable adjustments might the Fire Service consider making?

The DDA gives a number of examples of reasonable adjustments that you and your employer may find useful. Examples given are:

- **Making adjustments to premises**, such as fitting a handrail to all staircases for a firefighter who has a mobility impairment.
- **Allocating some of the firefighters work to someone else** most jobs involve a range of tasks, which may not all be essential - some could be carried out by someone else. For example, a firefighter is not allowed to drive the appliance as they have epilepsy. However, they can still do all the other tasks, so the crew may need to rearrange driving duties.

- **Being flexible about hours - allowing a disabled firefighter to have different core working hours to others.** If a firefighter has mental health issues, for example they may find it easier to have fixed hours that are the same every day. This would mean removing them from the shift rota because they find it easier to work within a fixed framework.
- **Allowing time off for rehabilitation, assessment or medical treatment.** Rotas should be amended to allow a reasonable amount of time off to attend medical appointments.
- **Providing training.** This should be available to everyone and be delivered in an appropriate format. For example, a firefighter with dyslexia should have access to a computer with appropriate support software, in order to access the training materials.
- **Using modified equipment.** For example a firefighter with a hearing impairment may not be able to respond to a ringing alarm bell. If the firefighter had a vibrating pager on their belt or a flashing signal alarm was installed they could respond to an alarm the same way as their colleagues.
- **Making instructions and manuals more accessible.** Employee handbooks, health and safety manuals, duty lists, etc should be available in

alternative formats such as large print, Braille, audio tape, etc so they are accessible to any staff with a visual impairment.

- **Transferring someone to an existing vacancy**

When a firefighter is no longer able to undertake an operational role, even with reasonable adjustments, the employer must consider re-deploying them to another suitable vacancy.

But what is reasonable?

There is no concrete definition of exactly what a reasonable adjustment will entail in every situation because each case has to be assessed upon its own merits. However, when considering if an adjustment is reasonable, the following factors should be taken into account:

- how effective the adjustment is in preventing the disadvantage
- how practical it is
- the financial and other costs of the adjustment and the extent of any disruption caused
- the extent of the employer's financial or other resources
- the availability to the employer of financial or other assistance to help make the adjustment

- the nature of the employer's activities and the size of the organisation
- Health and Safety requirements (see next section).

Bear in mind that the Access to Work scheme (see section on Access to Work) may be able to pay in part for many adjustments. Even if Access to Work can't fund them, your employer still has a duty to make reasonable adjustments for a disabled firefighter.

If your employer fails to make a reasonable adjustment then they are likely to be in breach of the DDA.

(d) Harassment

Harassment occurs when, for a reason which relates to the firefighter's disability, another person engages in unwanted conduct which may violate the disabled firefighter's dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment for that disabled firefighter.

For example, a firefighter who has dyslexia is often called 'stupid' by a colleague. This is harassment whether or not the person was aware of these comments as it was said with the intention of humiliating them. Your employer must seek to deal with this inappropriate conduct.

For example: a firefighter makes a complaint to his employer about jokes/nasty comments being made by his colleagues about his disability. The employer MUST act to try and stop this harassment or they could be in breach of the DDA.

(e) Victimisation

It is unlawful to victimise someone because they have instigated or taken part in legal proceedings under the Act or have alleged in good faith that someone else could be in breach of the Act, whether or not they are disabled.

For example: An FBU representative presents her employer with a number of issues relating to unfair treatment of disabled colleagues. She has good reason to do this as she has evidence that the employer may be discriminating. If the employer then brands her a 'trouble maker' and victimises her, they are likely to be in breach of the DDA.

This part of the Act is the only time when a non-disabled person could take a case under the Act.

What about funding for reasonable adjustments?

The costs involved in employing a disabled firefighter are often minimal, if anything at all. More often it will be a case of changing the way things are done to ensure that disabled firefighters can do their job.

Much of the cost for specialist equipment, training or other reasonable adjustments, may be met by Access to Work who are able to pay a percentage of approved costs, depending on how long a firefighter has worked for their employer.

Access To Work

This UK government scheme is available via the Jobcentre Plus Disability Service operated by local jobcentres. It provides practical advice and support to disabled people and their employers to help overcome obstacles that disabled people encounter in getting or keeping a job. Access to Work can pay a grant towards the cost of reasonable adjustments that a disabled person needs. For example, it can help pay for:

- a communicator at a job interview if an employer is interviewing a person who is deaf or has a hearing impairment and they need a communicator with them at an interview (e.g. a British Sign Language interpreter)

- a support worker, such as a reader at work, for a blind or visually impaired person.
- specialist equipment to meet a disabled person's particular requirements in work, e.g. voice-activated software for a firefighter who has dyslexia
- adaptations to premises or to existing equipment such as installing an accessible toilet
- help with extra travel costs to, or in work, that a disabled person may incur because of their disability.

You should ensure that your employer knows about this service when they are deciding whether they can make an adjustment for a disabled firefighter.

Even if Access to Work may not be able to pay for the adjustment, the responsibility lies **with the employer**, and they cannot refuse to make a **reasonable** adjustment even if the employer must incur some costs.

Health and Safety Issues and Risk Assessment

Your employer may try to use Health and Safety requirements as a justification for either discriminating against a disabled firefighter or for failing to make an adjustment. Although employers will always have to comply with health and safety requirements, there are frequently ways of reconciling health and safety considerations with the needs of disabled firefighters. Where there is a conflict, employers must make a fair and effective assessment of any health and safety issues raised and consider any reasonable adjustments that can be made before a decision is made.

For example: An employer says that a firefighter with diabetes would not be safe to go into buildings to effect a rescue or make the building safe, because they may have a hypoglycemic attack.

The employer has clearly made assumptions about the disabled person, how their condition affects them and how they manage it. The employer should undertake a full risk assessment, which is fully consultative and inclusive, which takes into account the individual's particular medical condition, and which looks at making any reasonable adjustments to mitigate any identified risks. The service must treat disabled people as individuals.

Occupational health advisers

Your occupational health adviser is there to support you and your disabled colleagues. You should expect that they will talk with you and the firefighter about their disability, and the effects this may have on their ability to do their job. They should also be able to provide some advice on what reasonable adjustments may enable the firefighter to perform to the best of their ability in their job.

You need to ensure that you work with your occupational health adviser, and that they do not focus on the medical aspects of the person's disability (i.e. an exact medical prognosis of what their disability is) but on how it will affect them in their job and what reasonable adjustments they might need.

The advice that occupational health advisers give to your employer should be about what reasonable adjustments could be made to enable the disabled officer to manage their disability and continue in their role. If their disability is such that they are unable to continue in their present role, even with reasonable adjustments, your employer must examine options for redeploying them to another suitable existing vacancy.

Retirement on ill health grounds

If a firefighter develops a disability, or their disability changes, your employer should not automatically try to retire them on ill health grounds. They have a duty to look at what adjustments they could make to enable the firefighter to continue working in their current role, or in another role in the Service.

Each case will be different; the main point to bear in mind is that you and the firefighter should be consulted about what they wish to do, rather than the employer assuming that there is only one course of action. The Act does not mean that if an officer does become disabled, and they do wish to retire on ill health grounds, that your employer should ignore this request.

The employer must ensure that the process they go through to decide about medical retirement is fair, open and as far as possible meets the firefighter's requirements as a disabled person.

The recent amendments to the Firefighter's pension scheme, mean that an employer is allowed to keep a firefighter in the pension scheme even if they are undertaking a role which may not be a fully operational.

What to do if you feel someone is being discriminated against

If you believe that your employer has directly discriminated against a disabled firefighter, failed to make reasonable adjustments or has practiced disability related discrimination, you and the disabled firefighter may need to consider further action.

This action might include:

- Having an informal discussion with your employer and the firefighter about the firefighter's requirements and reminding the employer of their duties under the DDA.
- Making a complaint about the firefighter's treatment through the organisation's grievance procedure with the help of the Fire Brigades Union. You must use this procedure before bringing a claim at a tribunal. You should complain in writing and keep a copy.

- Following the 'questions procedure'. This procedure is intended to help someone who feels that they have been discriminated against by their employer to obtain information from the employer about the treatment they have received. Guidance on this procedure is contained in the DRC publication 'The Questions Procedure' which you can obtain from the DRC's website or Helpline.
- Making a complaint to an employment tribunal.

When making a complaint to an employment tribunal it is important to bear in mind that there is a time limit on when a complaint can be submitted. The time limit is **three months** from the date of the alleged act of discrimination.

You should seek advice from your FBU representative about how to take forward any legal action.

Where to go for further help

Fire Brigades Union

The Fire Brigades Union's Confidential Support Helpline number is Freephone 0800 783 4778 and is run by Confidential Counsellors.

FBU Head Office address is:

Bradley House
68 Coombe Road
Kingston upon Thames
Surrey KT2 7AE

Tel: 020 8541 1765

Fax: 020 8546 5187

Disability Rights Commission

DRC Helpline
FREEPOST MID 02164
Stratford Upon Avon
CV37 9BR

Tel: 08457 622 633

Textphone: 08457 622 644

Fax: 08457 622 611

Email: enquiry@drc-gb.org

Website: www.drc-gb.org

The DRC's website has lots more information about disability and disabled people's rights. It also has more

links to other useful organisations. You can also download a free copy of the DRC's Statutory Code of Practice on Employment and Occupation.

Employers' Forum on Disability

Nutmeg House

60 Gainsford Street

London

SE1 2NY

Tel: 020 7403 3020

Fax: 020 7403 0404

Textphone: 020 7403 0040

Website: www.employers-forum.co.uk

RADAR (Royal Association for Disability and Rehabilitation)

12 City Forum

250 City Road

London

EC1V 8AF

Tel: 020 7250 3222

Textphone: 020 7250 4119

Fax: 020 7250 0212

Email: radar@radar.org.uk

Website: www.radar.org.uk

RNIB (Royal National Institute for the Blind)

105 Judd Street

London

WC1H 9NE

Tel: 020 7388 1266

Fax: 020 7388 2034

Email: email@rnib.org.uk

Website: www.rnib.org.uk

RNID (Royal National Institute for the Deaf)

19-23 Featherstone Street

London

EC1Y 8SL

Tel: 0808 808 0123

Textphone: 0808 808 9000

Fax: 020 7296 8199

Email: informationline@rnid.org.uk

Website: www.rnid.org.uk

MIND (Mental Health Charity)

PO Box 277

Manchester

M60 3XN

Tel: 0845 766 0163

Email: info@mind.org.uk

Website: www.mind.org.uk

Diabetes UK

Diabetes UK

10 Parkway

London

NW1 7AA

Tel: 020 7424 1000

Fax: 020 7424 1001

Email: info@diabetes.org.uk

Website: www.diabetes.org.uk

Epilepsy Action

New Anstey House

Gateway Drive

Yeadon

Leeds

LS19 7XY

Tel: 0113 210 8800

Fax: 0113 391 0300

Email: epilepsy@epilepsy.org.uk

Website: www.epilepsy.org.uk

The International Register of Firefighters with Diabetes (UK)

8 Donnington Road

Willesden

London

NW10 3QN

Tel: 020 8451 1418

Email: irfduk@globalnet.co.uk

Website:

www.users.globalnet.co.uk/~irfduk/index.htm

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