Supporting Neurodiversity in the Workplace - Legal & Practical Considerations

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1. What is neurodiversity?

1.1 Neurodiversity, or neurological diversity, is a term used to describe the fact that every person's brain works differently. Humanity is neurodiverse: no two people have brains that are the same and hence no two people view the world in the same way.

1.2 Just as there are recognised differences within diversity, the same is true of neurodiversity:

- There is a recognised way of thinking and communicating that has become the accepted norm within society and which is referred to as being 'neurotypical';
- People whose communication and/or thinking differs from this pattern are described as being 'neurodivergent'.

Neurodiversity describes the natural range of brain structure or function (and, consequentially, behavioural traits) within the human population. This range encompasses multiple neurotypes: that is, the cognitive and behavioural patterns that determine how a person processes the world. Neurotypical and neurodivergent are both neurotypes. Every person has a unique set of cognitive skills which include memory, attention and problem solving, and all of which make up a person's cognitive profile.

1.3 Individuals may have a neurotypical profile or a neurodivergent profile, and there is nothing 'right' or 'wrong' about having either. (The general estimate is that about 20% of people in the UK are likely to be neurodivergent). However, and whilst people with neurodivergent conditions often have skills and attributes that are not normally associated with neurotypical people, some neurodivergent people may face workplace challenges that neurotypical people generally do not. In the workplace, this might look like a neurodivergent employee excelling in some areas of their role such as creative problem-solving, whilst struggling with other areas such as time management. It's therefore essential that employers and colleagues alike are understanding and supportive: the concept of neurodiversity encourages acceptance and accommodation of all neurotypes and this is known as neuroinclusion.

1.4 Neurodivergent conditions can be divided into three categories:

- Applied neurodivergence: this includes conditions with which an individual is born and which are not considered to be a health condition. The term refers to difficulties in the application of cognitive skills such as gross motor control, number concepts and reading, and includes conditions such as:
  - Developmental coordination disorder or dyspraxia;
  - Dyscalculia (difficulty in understanding numbers, performing mathematical calculations and applying number concepts);
  - Dysgraphia (a developmental learning disorder with impairment in written expression); and

- Dyslexia (a developmental learning disorder with impairment in reading);

- Clinical neurodivergence: this includes neurological conditions with which an individual is born and which are considered to be a health condition. Clinical neurodiversity relates to difficulties in communication, social skills, behaviour and impulse control, and includes conditions such as:

  - Attention deficit hyperactivity disorder ('ADHD');
  - Autism spectrum condition;
  - Intellectual disability; and
  - Tic syndromes such as Tourette syndrome.

- Acquired neurodivergence: this includes neurological differences that change cognition and behaviour in an individual and which can develop as part of a health condition or injury. Acquired neurodivergence or neurodiversity relates to conditions that can be resolved as an illness or injury heals, as well as conditions that can worsen as an individual's health deteriorates, and includes:

  - Acquired or traumatic brain injury caused by an accident or event;

  - Illnesses that cause changes in cognition and behaviour, either as a direct result of the illness or through treatment of the illness (e.g. chemotherapy); and

  - Mental health conditions such as PTSD, anxiety and depression.

(Over the course of their life an individual may experience one or more neurodivergent conditions which is why adult diagnoses are becoming more prevalent).

1.5 Some neurodivergent conditions such as dyslexia, dyscalculia and dyspraxia can impact an individual's ability to learn and some people prefer to refer to their condition as a learning difference rather than describing themselves as being neurodivergent. It's a matter of personal preference for the individual concerned and most neurodivergent people will be happy to explain their terminology preferences.

1.6 Language of neurodiversity:

a) There are no legal or clinical definitions of the terms "neurodiversity", "neurodivergence" or "neurotypical". The language around neurodiversity is evolving and neurodivergent individuals may have their own preferences about the language used to frame their experiences.

b) Generally, the neurodivergent community prefers identity-first language to person-first language. This means saying that, for example, a person is autistic or is a neurodivergent person rather than that they have autism or are a person with a neurodivergent condition. This is because many individuals see neurodivergence as part of who they are, not something they have.

c) Language should be used sensitively. For example, when talking about neurodiversity, it's recommended to avoid terms such as "suffering from" or "symptoms" which may suggest that neurodivergence is an illness. Respect and sensitivity around language can be demonstrated by:

   - Being open about not knowing things and making the effort to learn;
   - Acknowledging if an error is made and taking steps to resolve it; and
   - Remembering that every neurodivergent person is different.

d) An explanation about some of the frequently used terms relating to neurodiversity can be found in **Appendix 1** to this guidance note.

2. Supporting neurodiversity in the workplace - ethical, commercial & operational significance

2.1 An independent research report published by Acas in 2025 estimated that 20% of the UK is neurodivergent, with co-occurrence (having more than one condition) being common. In September 2025, a study that analysed 135,000 occupational health referrals found that 10% of employees were referred due to a neurodivergent condition, with neurodivergence now the third most common reason for referral to occupational health after mental health and musculoskeletal issues. Growing awareness of neurodiversity in the UK means that neurodivergent conditions are likely to become more prevalent in the workplace as people seek diagnoses, or guidance from occupational health. Despite this, neurodivergent individuals are significantly underrepresented in the labour market. Figures published by the Department for Work and Pensions (DWP) in January 2025 show that, while 54.7% of disabled people are currently in employment, the figure is only 31% for those with neurodivergent conditions.

2.2 As explained in section 3 below, there is legal protection for anyone who suffers an unjustifiable detriment at work because of them having a neurodivergent condition or learning difference. However, the primary reason for employers to ensure that they create an accessible and supportive workplace for all staff is that this makes ethical, commercial and operational sense (as well as being consistent with the social model approach to disability which is explained below).

2.3 Everyone is neurodiverse, whether they are neurotypical or neurodivergent. As such, successful employers understand the need to create an accessible and supportive working environment which facilitates the recruitment, promotion and retention of all staff and which enables everyone to perform to the best of their individual abilities. Whilst this might involve the implementation of workplace adjustments to assist people with neurodivergent conditions or learning differences, such adjustments will often also benefit their neurotypical colleagues.

2.4 Whilst the precise measures that might reasonably be needed will vary from one scenario to another, paragraphs 2.7 and 2.8, together with **Appendix 2** below, set out some generic steps that should assist employers in creating an accessible and supportive working environment for everyone.

2.5 Operationally and commercially, successful employers also understand that the adoption of an accessible and supportive workplace culture will – by facilitating good performance from an engaged and motivated workforce - improve the quality of services being provided to customers/the public. In addition, a better understanding of neurodiversity amongst the workforce should enable better interaction with customers and the public.

2.6 <u>The social model of disability</u>:

a) Traditionally, a 'medical model' approach has been adopted when dealing with disability: disability was seen as being caused by an individual's health condition or impairment and by fixing their body, disabled people would be able to participate in society like everyone else. This is an outdated model that is no longer supported by disabled people or their representative organisations.

b) By contrast, the social model of disability adopts the view that disability results from barriers in society, derogatory attitudes and social exclusion (whether intentional or inadvertent) which make it difficult or impossible for disabled people to attain their full potential. While physical, sensory, intellectual, or psychological variations may result in individual functional differences, these do not necessarily have to lead to disability unless society fails to take account of and include people with respect to their individual needs. By way of an example:

- If a person is unable to climb stairs, the medical model focuses on making the individual physically able to climb stairs whereas the social model tries to make stair-climbing unnecessary, such as by making society adapt to the person's needs and assist them by replacing the stairs with a wheelchair-accessible ramp. According to the social model, the person remains disabled with respect to climbing stairs, but the

disability is negligible and no longer disabling in that scenario, because the person can get to the same locations without climbing any stairs.

c) Where employers adopt a proactive approach in providing an accessible and supportive workplace then they are facilitating the social model of disability. Managers should not be focussing on employees' supposed 'conditions' or whether they are disabled, but should instead concentrate on whether a workplace adjustment would be both reasonable and effective in any given case: what does a person require to help them perform/integrate, etc. better, irrespective of their disabled status?

2.7 Raising awareness of neurodiversity:

a) Having a well-informed workforce can help create a supportive environment for neurodivergent employees. It can also encourage those who may be embarrassed about their condition to speak up and ask for support. Acas suggests that an employer can:

- Include information about neurodiversity in induction materials and in any mandatory training programmes, perhaps as part of other equality and inclusion training;
- Run neurodiversity awareness days and campaigns;
- Encourage senior employees to act as role models, for example by acting as neurodiversity champions;
- Set up a staff network for neurodivergent employees to share experiences and raise issues that need addressing;
- Signpost any support available through a trade union; and
- Consider accessibility needs for meetings, events and training sessions.

b) It is also good practice for an employer to implement a neuroinclusion policy to support neurodivergent employees and to emphasise the organisation's inclusive approach. The policy should be written in a clear, accessible way, without jargon, and ideally using short sentences and paragraphs.

2.8 Support for managers:

a) In addition to raising awareness of neurodiversity among the general workforce, managers must be aware of how to spot neurodivergent traits and how to mitigate the risks of claims for disability discrimination.

b) Acas states that an employer can support managers in the following ways:

- Providing training opportunities, for example, on handling reasonable adjustments and discrimination;
- Making sure managers know how to use the organisation's neurodiversity policy;
- Encouraging collaboration between managers across the organisation to share experiences and approaches;
- Giving managers the time and authority to promote neurodiversity inclusion;
- Giving managers access to support from HR or occupational health advice;
- Reminding them to have regular one-to-one meetings where team members can discuss any support they need;

- Encouraging them to regularly review their team's workload; and
- Monitoring things they put in place to make sure they are having a positive effect.

c) Acas research indicates that good practice involves supporting managers with regular training on reasonable adjustments and in effectively communicating with their teams, and tools and support to manage emotional demands. The employer should ensure that line managers have a designated point of contact to ask for advice if necessary and to debrief after difficult conversations. In smaller organisations, this may mean bringing in specialist advice, for example, from an HR partner, and then embedding new knowledge across the organisation.

d) Managers must think beyond standard categorisations of neurodivergent employees and be aware that not all people who are diagnosed with a particular condition will experience it in the same way. This calls for employers and managers to adapt to the individual needs of neurodivergent employees, rather than relying on a one-size-fits-all model.

3. Legal protection

3.1 **The impact of neurodiversity in the workplace**:

a) Whilst people with neurodivergent conditions and learning differences often possess skills and attributes that neurotypical people do not, they may also struggle with certain aspects of working life because of their individual cognitive profile. For example:

- Where an individual's neurodivergent condition impacts upon their communication skills then this might have a detrimental impact on a recruitment or promotion application made by them.
- Where an individual struggles to process written information or to express themselves clearly in writing then this might affect their day-to-day performance and, in turn, result in a poorer annual appraisal and/or the non-receipt of a pay rise or annual bonus;
- Alternatively, there may be friction in the workplace due to a lack of understanding amongst colleagues about the impact of a person's neurodivergent condition on their personal interaction with others.

b) Whilst, as mentioned above, it makes ethical, commercial and operational sense for an employer to provide an accessible and supportive working environment that helps neurodivergent people overcome their individual challenges, it's also important to consider what legal protection is provided if a job applicant or an existing employee suffers any form of disadvantage because of a neurodivergent condition or learning difference.

c) As explained below, the two main forms of legal protection are the right not to be unfairly dismissed and the protection against disability discrimination.

3.2 **Unfair dismissal**:

a) Employees who have been employed for at least two years* by the same employer have a statutory right not to be unfairly dismissed under the Employment Rights Act 1996 ('ERA'). *(In certain circumstances - including where the reason for a person's dismissal is discriminatory - an employee can bring an unfair dismissal claim without needing to satisfy this two-year qualifying period. In addition, this qualifying period will be reduced to six months as from 1 January 2027).

b) An employee who believes that they have been unfairly dismissed may lodge a claim with an Employment Tribunal and, if they do so, then their former employer must be able to demonstrate three things in order to satisfy the Tribunal that the employee's dismissal was fair, namely that:

- The reason for the employee's dismissal was one of five potentially fair reasons permitted in the ERA;
- The employer adopted a fair procedure when deciding to dismiss the employee; and
- That the employer's decision to dismiss the employee was reasonable in all the circumstances.

c) Where an employee's neurodivergent condition or learning difference is detrimentally impacting upon their work then this is likely to manifest itself in poor performance, misconduct and/or a poor sickness absence record. All three are potentially fair reasons for dismissing an employee, thereby satisfying the first of the fair dismissal requirements.

d) The employer must then go on to satisfy the Tribunal that it adopted a fair procedure when deciding to dismiss the employee. Whilst the specific procedure to be followed will depend upon the reason for dismissing the employee, there are some important general principles which should be followed by an employer, including:

- The employer should follow a written procedure which has been made available to the employee and which is accessible to them, such that the employee clearly understands what stage of the process they have reached at any given time (including the point at which they may be at risk of dismissal). The employer may need to make suitable adjustments to enable a neurodivergent employee (e.g. someone with dyslexia) to fully understand and participate in the procedure being adopted;

- The employer should fully investigate the reason(s) for the poor performance, alleged misconduct or poor attendance and consider what steps (including the implementation of relevant workplace adjustments) might help the employee improve and achieve the required standards. Where any workplace adjustments are implemented then management must allow a suitable period to determine if they are effective;

- Other than in a case of gross misconduct (which might – on the particular facts – warrant dismissal without any prior warning), appropriate written warnings should normally be given as soon as any problems first emerge, and each warning must clearly explain the perceived shortfall in the employee's performance, conduct or attendance, the required improvement, the timeframe in which the improvement must be achieved and the potential consequences of failing to achieve that improvement;

- Prior to any consideration of dismissal hearing, the employee must be notified in writing of the reason(s) why their dismissal is being considered and they should be provided with a copy of any evidence (which must be accessible to them) upon which the employer will be relying to enable the employee to prepare their defence. At the consideration of dismissal hearing the employee must have an adequate opportunity to comment upon the evidence and present their case; and

- The employee should be given the opportunity to appeal against any decision (be it a warning or dismissal) to a more senior level of management not previously involved.

e) Finally, the employer will have to persuade the Employment Tribunal that its decision to dismiss the employee was reasonable. It's not for the Tribunal to substitute its own opinion for that of the employer; instead, its job is to determine whether the decision to dismiss fell within a range of reasonable decisions (e.g. ranging from a final written warning through to dismissal) that could have been reached on the facts of the case. (This is known in law as the "band of reasonable responses" test). In making such an assessment in a case involving a neurodivergent condition or learning difference, an Employment Tribunal will scrutinise the employer's decision with particular care. Amongst other matters, it will want to be satisfied that:

- Management reached a well-informed decision, taking into account all relevant and up-to-date expert advice (e.g. from an Occupational Health clinician);

- Proper consideration was given to any reasonable adjustments that might have improved the employee's poor attendance, conduct or performance and have thereby avoided their dismissal;
- Management carefully considered any alternatives to dismissing the employee, such as retraining them and/or re-deploying them to a more suitable role, given the workplace challenges that they face; and
- That no discrimination was involved (which would make any dismissal automatically unfair).

f) There is, in addition, one other way in which an unfair dismissal claim might arise. Within every contract of employment there is an implied duty of mutual trust and confidence that must exist between the employer and the employee. If an employer behaves in such a way as to breach that implied duty then, depending upon the facts, the employee may be entitled to resign and claim that they had been 'constructively dismissed' - i.e. left with no choice but to resign considering the employer's behaviour - and that the dismissal was unfair. It would then be for the employer to show either that there had been no such breach or else that, even if there had been, the dismissal was nevertheless fair on the facts of the case (which would typically be difficult to demonstrate).

g) The protection against unfair dismissal should mean that no employee will ever be dismissed for a reason related to their neurodivergent condition or learning difference without management first providing all appropriate support to try and help them remedy any workplace concerns and thereafter ensuring that it makes a well-informed decision on the facts of the case. However, the fact that an employee's poor performance, misconduct or attendance may be caused by their neurodivergent condition or learning difference does not prevent an employer fairly dismissing them: if management have followed a fair procedure and have sought relevant expert guidance and support then a point may reasonably be reached where the employer is justified is concluding that 'enough is enough'.

3.3 **Disability discrimination**:

a) Neurodivergent conditions and disability:

i) To satisfy the definition of disability in section 6 of the Equality Act 2010 ('Equality Act'), a person must have a physical or mental impairment that has an adverse effect on their ability to carry out normal day-to-day activities which is both:

- Substantial, meaning more than minor or trivial; and
- Long term, meaning that it has lasted or is likely to last for at least 12 months.

ii) The way that neurodivergent conditions manifest themselves may vary widely between individuals. Therefore, it's not a foregone conclusion that a neurodivergent employee will be considered to be disabled for the purposes of the Equality Act. As neurodivergence exists on a spectrum, this is determined by considering the effect on an individual employee on a case-by-case basis, as with any other condition.

b) Discrimination in employment is prohibited in England, Wales and (with some minor exceptions) Scotland under the Equality Act, which makes it unlawful to discriminate against people in respect of one or more of nine 'protected characteristics' which include disability. The Equality Act protects a range of individuals in the workplace, including job applicants, existing employees, apprentices, contract workers and people on work experience.

c) The Equality Act prohibits various types of discrimination: some apply to all nine protected characteristics, namely: direct discrimination, indirect discrimination, harassment and victimisation, whilst some only apply to certain protected characteristics, e.g. the forms of additional discrimination protection which are specific to

disabled people. **Appendix 3** provides a brief explanation of the different types of outlawed disability discrimination.

d) If the workplace impact of an employee's neurodivergent condition or learning difference is enough to result in poor performance, misconduct or an unacceptable level of sickness absence, such that they are at risk of receiving a warning or being dismissed by their employer, then the employee may well be 'disabled' for the purposes of the Equality Act. This in turn will provide them with (amongst other matters) protection against indirect disability discrimination and discrimination arising from disability and will also trigger the employer's duty to make reasonable adjustments. In practice, the question of whether disability discrimination has occurred typically comes down to whether management have fulfilled their duty to make reasonable adjustments:

- Where an employee alleges that they have suffered either indirect disability discrimination and/or discrimination arising from disability, e.g. because they have received a final warning for poor performance or attendance, an employer has a defence if it can show that its actions were justified;

- Justification involves an employer showing that the treatment of the employee (in this case the provision of a final warning) was a proportionate means of achieving a legitimate aim. The second element is often comparatively straightforward: few people would reasonably claim that an employer cannot require its staff to maintain reasonable levels of performance or attendance. However, it's typically harder for an employer to satisfy a Tribunal that the way in which it sought to achieve good performance or attendance was proportionate, i.e. that there was no less discriminatory way that this could be achieved.

Integral to the question of justification is the duty to make reasonable adjustments: if there were workplace adjustments that the employer could have implemented and which would have improved the employee's performance or attendance to a satisfactory level, and if management failed to implement such adjustments, the employer will almost certainly fail in any justification defence.

3.4 Termination and post-employment issues

a) A worker remains protected from discrimination and harassment after their employment ends (section 108 Equality Act). Case law has also confirmed that a worker is protected from victimisation by a former employer after termination of the employment relationship.

b) In the case of a neurodivergent employee, post-employment discrimination could occur if, for example, a former employer refused to provide a reference or made negative comments in a reference based on confidential information about the individual's condition, which affected their future employment prospects.

c) Additionally, the duty to make reasonable adjustments for a disabled person continues after the employment relationship has ended if the disabled person is placed at a substantial disadvantage (section 108(4), Equality Act). For example, this could arise in the context of a dismissal appeal hearing, where the employer would need to consider how they could make adjustments to the format of the hearing to accommodate the needs of a neurodivergent employee.

4. Neurodiversity in the workplace – common scenarios

4.1 As mentioned above, and whilst people with neurodivergent conditions and learning differences often possess skills and attributes which their neurotypical colleagues do not, they may struggle with certain aspects of working life because of their individual cognitive profile. It is therefore a priority for employers to ensure their workplace, practices and policies accommodate neurodivergent employees. This concept is referred to as neuroinclusion. Adopting neuroinclusive practices encourages neurodiversity in the workforce and allows neurodivergent employees to thrive. Set out below are some examples of common workplace scenarios in which a proactive approach can help to provide an accessible and

supportive workplace for people who might otherwise be disadvantaged. That said, and whatever the scenario involved, the key issue for any employer is to create a workplace culture in which everyone understands what neurodiversity is and feels confident about seeking help – and knows where to seek help - if they experience any neurodiversity-related problems at any stage of their career.

4.2 **Recruitment & promotion exercises:**

a) The UK currently has an ageing workforce and, as such, employers are going to be in increasing competition with each other to attract and retain people from a dwindling talent pool. It therefore makes ethical, commercial and operational sense to ensure that recruitment and promotion exercises caste the net as widely as possible and that such exercises are as accessible and inclusive as possible.

b) A good starting point for employers is to review their recruitment and promotion policies and procedures on a regular basis, which should include having them 'sense checked' by a panel of existing staff which comprises both neurotypical and neurodivergent people who can assess the policies and procedures from their individual perspectives. In addition, specific training should be provided to those who will be involved with recruitment and promotion exercises so that they understand how different neurodivergent conditions and learning differences might impact on applications from neurodivergent candidates.

d) As it will be impossible for employers to predict and cater for every possible scenario, it would make sense to highlight in recruitment and promotion adverts and any supporting materials that the employer welcomes applications from neurodiverse candidates, is willing to implement any reasonable adjustments that might assist any candidate, and a contact point should be provided for anyone who either requires any adjustments or who simply wants to discuss any issues about the process involved.

e) When reviewing recruitment and promotion processes, employers should consider the following:

i) Job description and person specification:

Conventional recruitment processes can unintentionally exclude neurodivergent talent. To avoid this, the job description and person specification should:

- Use clear, concise language, avoiding jargon;
- Reflect the actual skills needed to perform the role. It should also clearly distinguish between essential and desirable criteria and qualifications. This could otherwise dissuade autistic or dyslexic people from applying;
- Include a diversity and inclusion statement clarifying that the employer is willing to discuss reasonable adjustments (either to the recruitment process or to the role itself). This shows applicants that the organisation welcomes candidates with different neurotypes and thinking styles; and
- Focus on outcomes required from the recruitment exercise, rather than specific methods of achieving them.

ii) Application forms and CVs:

In relation to application forms and CVs, the employer should:

- Offer alternative ways to complete an application. For example, rather than insisting on an online application form, a candidate could be allowed to submit the required information by email or on a paper form;

- Provide information in a variety of accessible formats, such as Easy Read, large print, audio format and other data formats, and accept information from candidates in multiple formats; and

- Consider enabling candidates to list their experience in years rather than requesting dates of employment. This may reduce bias against career breaks and place greater emphasis on skills and experience.

iii) Tests and skill-based assessments:

In relation to assessing a candidate's competency, the employer should:

- Consider alternatives to written tests, such as work trials, practical assessments and mini apprenticeships. Any test or test alternative should be adapted where possible, for example by adjusting the format or mode of delivery. It may also be appropriate to allow neurodivergent applicants extra time to complete tests, or reconsider whether the tests need to be timed at all; and

- Focus on an applicant's ability to perform specific job tasks rather than their social competence. This could be achieved by setting an exercise similar to what would be required of the candidate in the role.

iv) Interviews:

At the interview stage, the employer should:

- Structure the interview, for example by using pre-determined questions, and inform candidates what to expect in advance. John Lewis publishes its job interview questions on its website to allow all candidates to prepare answers;

- Conduct the interviews in a quiet space free from distractions;

- Offer adjustments, such as allowing a candidate more thinking time before answering questions. When inviting a candidate to interview, the employer should make clear that they can request reasonable adjustments and that a formal diagnosis is not required; and

- Train interviewers to avoid making assumptions about a candidate based on their body language or social behaviour.

4.3 **Workplace adjustments**:

a) Onboarding and induction:

Employers should clearly explain the rules of the workplace during onboarding processes. These can include "unwritten rules" such as when to take breaks, when to arrive to get started for work and where to ask for help. An employer should put in place physical, technological and communication accommodations to help new neurodivergent employees as well as to support all employees.

b) Providing appropriate workspace for neurodivergent employees:

i) Acas emphasises that some neurodivergent people may not wish to disclose their condition to their employer because they fear a negative reaction or being stereotyped. It suggests that an employer should take steps to make its organisation neuroinclusive so that employees feel comfortable talking about neurodiversity and can still access support without sharing their neurodivergence. For example, all employees could be offered noise-cancelling headphones, or an employer could designate a private, quiet space that anyone can use to work in.

ii) Where the employer suspects that an employee may benefit from additional support, it should:

- Talk to the employee about what it has noticed;

- Frame the conversation positively by focusing on what support and reasonable adjustments might help;
- Keep the discussion confidential unless the employee agrees otherwise.

The employer should also be sensitive to the language of neurodiversity by:

- Asking someone what terms they prefer; and
- Matching a neurodivergent employee's language when appropriate (for example, in a one-to-one conversation).

Acas recommends a proactive reasonable adjustment process which is not contingent on a diagnosis or disclosure. Line managers should have early conversations at the recruitment and induction stages, asking new employees how they work best.

c) Examples of reasonable adjustments for neurodivergent employees:

Acas gives the following examples of adjustments that may help a neurodivergent employee in the workplace depending on the challenges they face:

Challenge:	**Reasonable adjustment:**
Concentration	- Noise-cancelling headphones - A fidget toy - A standing desk - Regular breaks throughout the day. - A quiet place to work away from distractions
Written communication	- Software to support reading or writing - Talking through written information - Breaking down instructions into clear steps - Using different coloured backgrounds for documents and signs - Extra time to read information and complete tasks
Organisation & time Management	- Regular check-ins on how work is going - Planners that visually highlight deadlines and appointments - Extra reminders - Breaking work up into smaller tasks - Extra time to plan out work.
Sensory overload	- A private, quiet space to go to when needed - Changes to dress code or uniforms (e.g. softer materials or calmer colours) - Noise-cancelling headphones - Computer screen filters to reduce brightness

	- Early warning of changes at work and extra time to process them.
Poor balance or co-ordination	- Specialist equipment (e.g. a different keyboard or mouse) - Organising spaces carefully (for example, avoiding clutter) - Signs giving clear directions around the workplace.

4.4 **Poor performance:**

a) There are various ways in which an employee's neurodivergent condition or learning difference might have a detrimental impact on their performance at work. Whilst each case will need to be managed according to its facts, there are some general practical steps that employers can take to provide a supportive workplace culture:

- Ensure that every recruit or newly promoted employee has a clear understanding of their role and responsibilities from the outset, and ensure that existing employees have a clear understanding of their role and responsibilities whenever these change or when an employee is returning from a lengthy absence from work (e.g. after maternity leave or a long sickness absence). Depending upon an individual's neurodivergent condition or learning difference, consideration may need to be given as to the method(s) by which this information can be most effectively provided;

- Encourage all staff to take ownership of their responsibilities, and build their confidence about both their own abilities and about management's support if mistakes are made or if they begin to struggle;

- Make effective use of properly structured probationary periods for new recruits and for those newly promoted, making it clear that people are not going to be unreasonably expected to 'hit the ground running' and that individuals should feel confident about asking for support if they are struggling;

- Hold regular informal performance reviews (e.g. at least quarterly but more often for those people who are newly recruited or promoted, and for those with additional workplace challenges resulting from their neurodivergent condition or learning difference) at which employees and management can discuss any concerns as soon as they arise;

- Hold formal appraisal meetings on schedule, ensure that both management and staff properly prepare for them and that SMART actions are agreed and subsequently actioned;

- Address performance issues as soon as they arise: management should fully investigate the reasons for any underperformance and ensure that the employee clearly understands both management's concerns and the evidence which substantiates those concerns. The employee should have an opportunity to explain their views before they and management agree upon the expected standards that must be achieved in future along with any SMART actions going forward, including the implementation of any appropriate workplace adjustments.

b) Once again it would make sense to ensure that:

- Any performance management policies and procedures are regularly reviewed by a panel of neurodiverse staff to ensure that they are accessible and supportive from a broad perspective;

- Those involved with managing performance have been trained so that they understand how different neurodivergent conditions and learning differences might impact on people's performance; and

- That consideration is given to making relevant reasonable adjustments within the workplace if this would overcome or mitigate any performance issues faced by an employee due to their neurodivergent condition or learning difference; and

- That consideration is given to making relevant reasonable adjustments to the performance management process so as to ensure that a neurodivergent employee can properly participate in it.

4.5 **Poor attendance**:

a) Some neurodivergent conditions might impact upon an employee's level of sickness absence either directly or indirectly (e.g. because concerns arising from a person's neurodivergent condition or learning difference are causing them anxiety and stress). Again, and whilst each case will need to be managed on its facts, there are some general steps that employers can adopt to try and avoid or at least minimise an employee's neurodivergent-related sickness absence:

   - Management should be proactive in tackling sickness absence. Steps might include:

     - Encouraging staff to seek help before they need to take time off (e.g. requesting flexible working if they think that a different work pattern might assist them in coping with the effects of an underlying condition);

     - Training managers to have effective (and sensitive) conversations with staff as soon as they appear to be struggling at work about any steps (such as workplace adjustments) that might assist them;

     - Ensuring that effective return-to-work interviews are undertaken with all staff when they return from any period of sickness absence so that the causes of the absence can be discussed and any reasonable workplace assistance provided;

     - Seeking early expert guidance from an Occupational Health clinician if it appears that this might assist.

   - Management should act promptly when an employee's sickness absence breaches any established attendance standards. Management should fully investigate the reasons for the employee's sickness absence and ensure that the employee has an opportunity to explain their views before they and management agree upon the expected standards that must be achieved in future along with any SMART actions going forward, including the implementation of any appropriate reasonable workplace adjustments.

b) Once again it would make sense to ensure that:

   - Any sickness absence management policies and procedures are regularly reviewed by a panel of neurodiverse staff to ensure that they are accessible and supportive from a broad perspective;

   - Those involved with managing sickness absence have been trained so that they understand how different neurodivergent conditions might impact on people's attendance levels; and

   - That consideration is given to making relevant reasonable adjustments to the sick absence management process and/or within the workplace if this would overcome or mitigate any attendance problems faced by an employee due to their neurodivergent condition.

4.6 **Misconduct**:

a) Neurodiversity is likely to arise in the context of misconduct in one of two ways:

   - A neurodivergent condition or learning difference may be a contributory or mitigating factor when an employee commits an act of misconduct, e.g. where a dyslexic employee has not fully understood and then subsequently breaches written food hygiene rules in a hospitality setting;

- Alternatively, a neurodivergent employee may be the victim of bullying or harassment because of their condition or learning difference, e.g. if they are picked on for being 'different' in their interactions with other staff members.

b) Whatever the context in which the misconduct occurs, training and awareness about diversity for all staff is likely to be a key element in reducing the chances of the misconduct arising in the first place and, where it does, in addressing the misconduct promptly and effectively:

- Where a neurodivergent condition or learning difference may be a contributory or mitigating factor in a case
then any manager involved in investigating and handling the case must understand the degree to which (if at all) any allowance must be given for the neurodivergent condition or learning difference;

- Where staff have been trained to have an awareness and understanding of neurodiversity then it should be hoped that the likelihood of a colleague being bullied or harassed because of their neurodivergent condition or learning difference will be greatly reduced. (Where such behaviour does occur then the fact that training has been provided is likely to increase the degree of culpability of the wrongdoer(s)).

c) Whilst each case will need to be managed on its facts, there are some general steps that employers can adopt:

- There should be a known grievance or disciplinary procedure which should be followed. The relevant procedure (and any accompanying guidelines) should be written, specific and clear, and should be accessible to all staff, including those with divergent conditions and learning differences;
- Employers should carry out any necessary investigations to establish the facts of the case, including the extent to which – if at all – neurodiversity was a factor. (As always, the investigation stage is the foundation of a well-handled grievance or discipline case);
- Appropriate written warnings should be given when problems first emerge (and the content of the warnings must be clear and understandable for all staff, including those with neurodivergent conditions and learning differences);
- There should be adequate notice given of any grievance or disciplinary hearing;
- Prior to any disciplinary hearing, the employee must be notified in writing of the substance of the complaint and the possible consequences should they be found guilty, including (where relevant) that their dismissal may be an outcome. In addition, the employee should be provided with a copy of all the evidence upon which the employer will be relying to enable the employee to prepare to defend themselves at the disciplinary hearing (and again all notifications and evidence must be clear and understandable for all staff, including those with neurodivergent conditions and learning differences);
- The employee must have an adequate opportunity to comment upon the evidence and present their case (and if they have a neurodivergent condition or learning difference that impacts upon their ability to express themselves effectively then appropriate support should be provided);
- The employee should be given the opportunity, where relevant, to appeal the outcome of any hearing to a more senior level of management not previously involved.

d) It would again make sense for employers to ensure that:

- Their disciplinary and grievance policies and procedures are regularly reviewed, including being sense checked by a panel of neurodiverse staff to ensure that they are accessible and supportive from a broad

perspective;

- Those involved with handling grievance and discipline cases have been trained so that they understand how neurodivergent conditions and learning differences might impact on people's behaviour in the workplace; and

- That consideration is given to making relevant reasonable adjustments within the workplace if this would overcome or mitigate any conduct-related problems faced by an employee due to their neurodivergent condition or learning difference; and

- That consideration is given to making relevant reasonable adjustments to the performance management process so as to ensure that a neurodivergent employee can properly participate in it.

This guidance note has been prepared as a general guide only. It is not a substitute for professional advice which takes account of your specific circumstances and any changes in the law and practice; at the time of the preparation of this note various changes to the relevant provisions may be pending. The subjects covered constantly change and develop. No responsibility can be accepted by the firm or the author for any loss occasioned by any person acting or refraining from acting on the basis of this note. The copyright in this guidance note is owned by Weightmans LLP.

[10.05.26]

Appendix 1 - Some common terms linked to neurodiversity

- Acquired or traumatic brain injury: acquired brain injury is damage to the brain caused by an accident or event. This condition can affect an individual's cognition and behaviour, through impairments to their memory, personal organisation, communication skills and their ability to concentrate.

- Attention deficit hyperactivity disorder (ADHD): ADHD is a neurodevelopmental condition that has three sub-groups: hyperactive ADHD, impulsive inattentive ADHD and combined inattentive and hyperactive ADHD. Individuals may experience effects that predominantly fall within one category or a combination of categories. ADHD is characterised by a persistent pattern (at least six months) of inattention and/or hyperactivity-impulsivity, with onset typically in early to mid-childhood. The degree of inattention and hyperactivity-impulsivity significantly interferes with academic, occupational or social functioning. Inattention refers to distractibility, problems with organisation, and significant difficulty in giving sustained attention to tasks that do not provide a high level of stimulation or frequent rewards. Hyperactivity refers to excessive motor activity and difficulties with remaining still, most evident in structured situations that require behavioural self-control. Impulsivity is a tendency to act in response to immediate stimuli, without deliberation or consideration of the risks and consequences. ADHD affects an individual's attention span, ability to focus and impulse control.

- Asperger syndrome: asperger syndrome is a form of autism with mild or no impairment in the individual's capacity to use language. The term 'asperger syndrome' has been replaced with autism spectrum disorder (please see below) although many people were historically given this diagnosis and may still use this term.

- Autism spectrum disorder (ASD) or autism spectrum condition (ASC): ASD or ASC is a neurodevelopmental condition that is characterised by persistent deficits in impulse control, sensory regulation, and the ability to initiate and sustain reciprocal social interaction and communication. It is also characterised by restricted, repetitive and inflexible patterns of behaviour and interests. It is worth noting that everyone with a diagnosis will have strengths and weaknesses, and some will have more autistic traits than others, but it is the degree and pattern of impairment which has led to the diagnosis of an ASD.

- Cognition: cognition refers to the mental action of acquiring knowledge and understanding through thought, experience and the senses. It is the process by which we take in information and carry out a resultant action as a result of that input stimulus. It encompasses many aspects of intellectual function, including:

  - Attention
  - The formation of knowledge
  - Memory and working memory
  - Judgement and evaluation
  - Reasoning and logical processing
  - Problem solving and decision making
  - Comprehension and production of language

- Comorbidity or coexistence: comorbidity refers to the presence of more than one disorder in the same person. For example, if a person is diagnosed with autism and dyslexia, those conditions are said to be comorbid. Coexistence, which has the same meaning as comorbidity, is used by many as an alternative to denote a gentler and less clinical approach in its description.

- Developmental coordination disorder (DCD) or dyspraxia: DCD or dyspraxia is a developmental motor coordination disorder that is characterised by a significant delay in the acquisition of gross and fine motor skills, and by impairment in the planning and execution of coordinated motor skills that manifest in clumsiness, slowness or inaccuracy of motor performance. It can also affect an individual's physical, social, emotional and sensory development.

- Dyscalculia: dyscalculia refers to acquired difficulty in understanding numbers, performing mathematical calculations and applying number concepts, which is inconsistent with the general level of intellectual functioning.

- Dysgraphia: dysgraphia is a developmental learning disorder with impairment in written expression. It is characterised by significant and persistent difficulties in learning academic skills related to writing, such as spelling accuracy, grammar and punctuation accuracy, and organisation and coherence of ideas in writing.

- Dyslexia: dyslexia is a developmental learning disorder with impairment in reading. It is characterised by significant and persistent difficulties in learning academic skills related to reading, such as word-reading accuracy, reading fluency and reading comprehension. It affects language cognition in the brain, which manifests itself in difficulties in reading, writing and ordering speech. Working memory is also affected.

- High functioning: high-functioning is an informal way of describing some autistic people who can speak, read, write and handle basic life skills like eating and getting dressed, at least superficially as well as neurotypical people can. The term can be applied to those with any neurodevelopmental condition who can often perform at a high level in the workplace, dependent on the context they are expected to work in. It is not an official medical term or diagnosis.

- Hypersensitivity: an unusually high or intense response to a particular stimulus (e.g. smell, texture or colour).

- Hyposensitivity: an unusually low response to a particular stimulus (e.g. light, pain or sound).

- Intellectual disability: intellectual disability is a developmental condition that can affect the development of an individual's cognitive function and adaptive behaviour skills. These two things can affect thinking, learning, problem solving and reasoning.

- Mental ill health: under the neurodiversity umbrella, mental health refers to conditions that affect cognition and behaviour, such as post-traumatic stress disorder (PTSD) and complex PTSD, anxiety, depression and obsessive compulsive disorder. These conditions can occur for a number of reasons, including adverse childhood experiences (ACEs), exposure to single-incident trauma, repeat and persistent exposure to low-level trauma, the side effects of medication, exposure to certain substances, or as a response to a significant life event.

- Neurodiversity: neurodiversity is an umbrella term used to describe differences in the human brain in relation to a range of mental functions, such as sociability, learning and mood attention. The concept is a respectful way of thinking about our colleagues and communities. Neurodiversity aims to highlight the positive attributes of different neurocognitive functioning, rather than focus on deficits or deviations from a set standard.

- Neurodivergence: a person whose brain 'diverges' from the majority of neurotypical people can be described as neurodivergent. Neurodivergence can be genetic (e.g. multiple sclerosis), the result of a brain-altering experience (e.g. a stroke), or a combination of the two. Neurodivergent conditions often come with pronounced strengths. However, there will typically also be areas where neurodivergent individuals struggle.

- Neurotypical: neurotypical describes a person who does not have a diagnosis of a neurodivergent condition and does not self-declare as being neurodivergent. Neurotypical is the opposite of neurodivergent.

- Reasonable adjustments: reasonable adjustments are changes to working conditions – e.g. adjusting an individual's hours of work or duties, or the provision of specialist equipment – to enable people to carry out their job more effectively and/or safely should they have particular medical or physical needs. Reasonable adjustments may be implemented as part of an employer's duties under disability discrimination law (please see below) or may be implemented by management simply as a matter of good practice.

Appendix 2 – Practical steps in creating an accessible and supportive working environment

1. Generic steps:

Whilst the precise measures that might reasonably be needed will vary from one employer to another, depending upon what they do, their size and resources, etc., set out below are some generic steps that are likely to assist most employers in creating an accessible and supportive working environment.

- Clear leadership: those organisations in which someone at a senior level has taken visible ownership of the organisation's support for neurodiversity issues have reported higher levels of staff engagement and the issues being treated more seriously, as well as such visible senior leadership enhancing the organisation's internal and external reputation.

- Regularly survey the workforce to get a better picture of staff needs: it's important for employers to understand the neurodiverse profile and needs of their workforce as this facilitates employee engagement and the provision of appropriate guidance and ongoing support.

- Create a staff neurodiversity review panel: many employers have benefitted from establishing a group of staff who are both neurotypical and who have a variety of neurodivergent conditions or learning differences, and who are tasked with periodically 'sense checking' new and existing policies, procedures and processes (e.g. those dealing with performance and sick absence management) from their individual perspectives so as to ensure that these take proper account of neurodiversity.

- Establish & maintain a specific neurodiversity policy and guidance: establishing a neurodiversity policy and guidance which explains how job applicants and existing staff will be supported will assist both employees and their managers. Many organisations have also launched a neurodiversity intranet page which features a range of resources and guidance from fact sheets and guides for line managers and employees, to recordings of online webinars delivered by in-house and third-party experts.

- Establish internal support groups and neurodiversity 'champions': many people have emphasised the importance of feeling supported in the workplace and knowing how to access that support. In addition, many organisations have established neurodiversity champions who deliver training and awareness sessions, support and information to both managers and colleagues.

- Raise awareness/provide training to the workforce generally: employers should consider how they can best raise awareness and provide training for all staff on an ongoing basis. Such activities should not be a "one-hit wonder" and changing attitudes and encouraging greater openness within an organisation will take time. Awareness raising might be undertaken when inducting new staff, via periodic workshops, via the intranet, etc. Some employers have adopted simple but effective innovations such as establishing virtual or face-to-face neurodiversity cafés and targeted training sessions for supervisors, those involved in recruitment and promotion exercises, etc.

- Proactively provide & maintain a record of workplace adjustments: managers should be proactive in 'nipping problems in the bud' and initiating (sensitively) discussions about any workplace adjustments that might assist an employee who might otherwise be disadvantaged due to the impact of a neurodivergent condition or learning difference. In addition, employers should consider the adoption of "reasonable adjustments passports", namely a record of adjustments agreed between an employee and their manager and which acts as a 'living' document about agreed changes in the workplace.

2. **Detailed steps**:

Workplace-related neuro-inclusive good practices can be divided into three interacting components:

- Place – the physical working environment, including the workspace and equipment within it;

- Processes – the internal processes and systems, including HR practices, that govern the way in which people are managed and supported at work; and

- People – the way individual employees treat one another, contributing to the workplace culture more generally.

Each of these components is considered below, albeit that the experiences and associated strengths and needs of any neurodivergent person are unique and so neuro-inclusive practices can never be "one size fits all".

a) **Place**:

Neurodivergent people are often greatly affected by their working environment, including the furniture and equipment contained within it. This is because of the sensory experiences that accompany many neurodivergent conditions, which can either be sensory-seeking or sensory-avoidant (or both, depending on stimuli and context), and involve not only the familiar 'five senses' (touch, taste, sight, smell and sound) but also the less well-known sense of balance, sense of

movement and awareness of bodily functions and needs. The following recommendations focus on how employers can make the physical work environment more neuro-inclusive.

i) Layout, design and work practices:

Employers should factor neuro-inclusive design into planning for workplace moves or refits and some relatively simple adjustments can benefit neurodivergent employees, e.g.:

- Avoiding 'loud' colours and busy wall or carpet/floor designs;
- Using natural lighting or easily variable electric lighting (avoiding fluorescent lighting, or other systems that have a flickering and/or noise-generating aspect);
- Adopting wide walkways and doorways along with clear signage;
- Creating different zoned areas of working to allow for different sensory experiences and interaction, e.g., quiet spaces and collaborative work areas;
- Deploying ventilation and air temperature systems that are as quiet as possible and which divert strong smells such as food preparation away from working areas;
- Having blinds for windows and offering individuals the choice of desk-lamps; and
- Using unscented cleaning products (and/or carrying out the cleaning of workspaces outside normal working hours).

Where possible, employers should allow neurodivergent colleagues a degree of choice about where they sit in the office. In some cases, a mixture of fixed-desk areas for those who prefer stability and full 'hot-desking' zones for others might be appropriate.

Where provision cannot be made for a neurodivergent employee to work in a quiet place, some adjustment to normal workplace practices may be helpful, e.g. allowing the use of noise-cancelling or white-noise headphones.

Formal office attire can also often be uncomfortable and constricting, which may have a heightened impact on neurodivergent staff with sensory needs. Where appropriate, neurodivergent employees should be encouraged to dress with their own comfort in mind.

ii) Assistive technology:

Assistive technology can often improve a neurodivergent employee's ability to perform certain tasks that they might otherwise find challenging. Neurodivergent employees should be made aware of the full range of available assistive technology and it should be tailored to their individual needs. Appropriate training and ongoing user support should be provided, together with a regular review of whether the technology continues to meet their needs. Examples of assistive technology include:

- Speech-to-text and text-to-speech software tools;
- Screen readers and recording devices (which may be useful for some people with dyslexia and dyspraxia); and
- Time management applications (which may be particularly useful for autistic people and/or those with ADHD).

iii) Office furniture & equipment:

Neurodivergent people who are 'tactile' learners, i.e. someone who uses movement, testing, trial and error and a non-traditional learning environment to retain and recall information (such as those with ADHD) can benefit from ergonomic

office furniture that allows them to fidget or stim (self-stimulate) in a non-intrusive way such that they can focus on tasks for longer. Similarly, autistic individuals, who can be sensitive to feelings and textures, can also benefit from ergonomic furniture. Examples include:

- Ergonomic furniture that supports movement at the desk like footrests, active chairs, and sit-stand desks;
- 'Active furniture' like rocking chairs, active stools, Swiss balls and mobile whiteboards;
- Tools like stress balls and fidget spinners to help calm an overactive mind; and
- Dual monitors (which assist organisation and information retention for those who struggle with it — it also supports eye health, good posture, and productivity for employees of every type).

b) **Processes**:

i) Adjustments:

It's important to ensure that neurodivergent employees who may benefit from workplace adjustments know how to ask for them, who to ask and what to ask for. The following are measures that would assist with this:

- Clear communication on the types of adjustment which a neurodivergent employee might be able to access and how they can request additional adjustments or conversations around adjustments;
- The provision of external expert assessors to assess the needs of neurodivergent individuals and suggest suitable adjustments;
- Ensuring that relevant stakeholders from across the organisation (e.g. health and safety teams, HR teams, premises teams, finance teams, IT teams and procurement) understand their responsibilities and are properly coordinated as part of the workplace adjustment process;
- Adopting a proactive approach to identifying and offering new workplace adjustment tools as these become available;
- Adopting language that focuses on the 'support' that organisations can provide to its applicants, employees and guests;
- Providing a list of internal (and, where appropriate, external) neuro-inclusivity advisors (with photographs) that applicants, employees and guests can speak to about workplace adjustments; and
- Adopting workplace adjustment passports that clearly show what adjustments are in place, or need to be implemented, for particular individuals.

ii) Flexible working:

Given the range of workplace factors that may create challenges for neurodivergent employees, some flexibility in how an individual works is often likely to be helpful, including the option of some home working and variable start and finish times.

iii) HR teams and processes:

HR teams and processes play a key role in safeguarding the wellbeing and career progression of all employees, particularly those with additional needs. The following are examples of measures that employers might consider:

- Assigning a particular person from HR to each individual, so that they feel comfortable in going to them for support;

- Appointing 'neurodiversity champions' or equivalent within the organisation whom people can contact directly to discuss any issues;
- Providing HR managers with appropriate training on how they can best help support neurodivergent individuals within an organisation and also training to help them identify possible indicators where a neurodivergent profile may be impacting upon an individual and/or the wider workplace;
- Offering employees access, in appropriate circumstances, to neurodiversity-specialist coaching services.

When writing job descriptions and detailing role content, consideration should be given to:

- Carefully considering the actual requirements of the job and making these specific, instead of including standard wording which does not actually reflect the requirements of the role; and
- Removing ambiguous language and excessive 'jargon'.

When designing competency frameworks for job descriptions, HR and those involved in hiring should:

- Ensure that competency frameworks are tailored to the actual role and any higher roles that an individual may be carrying out or aspiring to, rather than including generalised requirements;
- Where possible, be specific about what the expectations of the role are and when these needs to be achieved by; and
- Consider how competency frameworks need to be effectively managed: some expressions of neurodiversity benefit from enhanced management and objective setting whereas this level of management might seem inappropriate for more senior roles.

When discussing a neurodivergent employee's performance and deciding on reward and promotion, HR should ensure that:

- Those carrying out performance reviews have sufficient neurodiversity training;
- Any adjustments which an individual has in place are taken into account in any assessment of their performance;
- The employee has sufficient information ahead of the meeting, e.g. an agenda of the items that will be discussed, a clear understanding of the purpose of the review, and of any outcomes that are expected, e.g. agreed objectives; and
- Following a performance review meeting, HR should ensure that clear and unambiguous follow-up notes are circulated and that all the parties have the opportunity to review and agree to their content.

iv) Processing feedback and managing complaints:

There will inevitably be issues with how adjustment frameworks are implemented and, occasionally, more personal issues arising from working within certain teams or with certain individuals. When these issues do arise, it is important that there are effective systems in place to address them, and appropriately trained HR teams who can come up with effective solutions in a timely manner. In some cases, it may be appropriate to introduce a suitably qualified professional to help resolve issues.

c) **People**:

Ultimately, it's the people within an organisation and the way that they interact with one another which shapes the workplace culture and the following steps should help to promote a neuro-inclusive workplace culture:

i) Positioning and visibility:

Actively promoting neurodiversity inclusion within the workplace and making it a visible element of the organisation's wider diversity & inclusion strategy will be key to establishing a neuro-inclusive workplace culture. Steps might include:

- Establishing a senior leader who is responsible for championing neurodiversity;
- Making a public commitment to embracing neurodiversity and welcoming neurodivergent job applicants and supporting neurodivergent staff;
- Providing training and information on neurodiversity and the employer's approach to neurodiversity inclusion. Such training should be both organisation-wide and also tailored to those involved in recruitment and in managing existing neurodivergent employees;
- Creating a neurodiversity group or network which is linked with the other diversity & inclusion networks within the organisation;
- Implementing a neurodiversity-focused mentoring or buddying scheme;
- Ensuring that social and extra-curricular events are as neuro-inclusive as possible;
- Approaching third parties with whom the organisation has regular dealings to collaborate on neuro-inclusive initiatives; and
- Partnering with neurodiversity inclusion charities and organisations on pro bono work.

ii) Neuro-inclusivity training and awareness:

Understanding what neurodiversity is and how it affects individuals is crucial to fostering a neuro-inclusive workplace environment. A fear of stigma means that some neurodivergent colleagues may attempt to 'mask' their symptoms, making their own lives more difficult and preventing the employer from getting the most out of their staff. In addition, some managers may be concerned that neurotypical staff may regard some workplace adjustments as creating an unfair advantage for neurodivergent colleagues. A more aware and supportive workforce can help address both issues and employers should therefore provide:

- Neurodiversity awareness training for all staff (which in turn might be consolidated within neurodiversity resource 'toolkits' that signpost related employer programmes and external sources of support; and
- Specialised training and ongoing guidance for managers on how to run neuro-inclusive teams.

iii) Neuro-friendly workplace culture:

Employers should consider how they can make the workplace culture more neurodiversity-friendly in general, including encouraging flexibility, trust and communication between colleagues, giving them the confidence to seek help when it's needed.

iv) Integration with employee health and well-being provision:

Being neurodivergent may have a significant and ongoing impact on an individual's mental health. Conversely, an individual's mental health may impact their ability to manage their neurodivergence. Given the link between mental health and neurodiversity, good mental health and wellbeing services are crucial to neurodiversity inclusion in the workplace and employers should consider the following steps:

- Embedding 'Mental Health Champions' within the organisation and promoting an understanding of how neurodiversity may play a role in mental health challenges - as well as knowledge of where to seek more specialist support;
- Providing access in appropriate circumstances to career coaching for neurodivergent individuals;
- Providing neurodivergence-specialist counselling for those who may need it;
- Ensuring that appropriate channels are available for exploring concerns related to mental health and neurodiversity; and
- Reviewing benefits provisions and terms and conditions of private health policies (where these are offered) with a view to enabling neurodivergent people access to specialist assessment and support.

v) Processing feedback and managing complaints:

Again there will inevitably be issues with how adjustment frameworks are implemented or, occasionally, more personal issues arising from working within certain teams or with certain individuals. When these issues arise, it is important that there are effective systems in place to address them, and appropriately trained HR teams who can come up with effective solutions in a timely manner. In some cases, it may be appropriate to introduce a suitably qualified professional to help resolve issues.

Appendix 3 - The different Types of Outlawed Disability Discrimination

Direct disability discrimination:

a) Direct disability discrimination occurs when person A (e.g. a current employer or a co-worker) treats person B (e.g. a current employee or work colleague) less favourably than A treats or would treat other people, and does so because:

- B is personally disabled; or
- B is wrongly thought by A to be disabled (perceptive direct discrimination); or
- because B associates with someone else who is disabled.

b) By way of three examples:

- A manager decides not to shortlist a colleague for a promotion interview because of her history of depression (which has previously been identified as amounting to a disability), despite the fact that she is better qualified than most of the other shortlisted candidates and despite a recent Occupational Health report which indicated that her depression was well controlled with medication. The manager's actions would amount to direct disability discrimination;
- An employer decides to dismiss an employee with less than two years' service (and who would not therefore normally be entitled to claim unfair dismissal) because the employee has revealed that he suffers from periodic bouts of depression and the manager is concerned that this will impact on the employee's work (which has been satisfactory to-date). The manager decides not to refer the employee to Occupational Health before dismissing him as the manager is concerned that if he does so then the OH clinician may advise that the employee is disabled and the manager knows that this would make dismissing him more risky. The manager takes the view

that as long as he doesn't actually know that the employee is disabled then he can't discriminate against him. The employee subsequently brings a claim for direct disability discrimination and, after hearing the relevant evidence, the Employment Tribunal conclude that he is not in fact disabled. However, the Tribunal allows the claimant to pursue a claim for direct disability discrimination on the ground that the manager's actions were (in part at least) motivated by a perception that he might be disabled;

- A single father who cares for a disabled son has to take time off work whenever his son is sick or has medical appointments. His employer resents the fact that he needs to take time off work and eventually dismisses him. The dismissal may amount to direct disability discrimination against the (non-disabled) employee by association with his disabled son.

Indirect disability discrimination:

a) Indirect disability discrimination arises where an employer applies a provision, criterion or practice (PCP) to all of its staff and which is not intended to result in anyone being treated less favourably, but which in practice disadvantages a group of people within the workforce who share a particular disability. In this scenario, where the relevant PCP disadvantages an individual within that group, they will have a claim for indirect disability discrimination unless the employer can objectively justify the application of the relevant PCP. For example:

- An employer introduces a new annual bonus scheme which is based upon employees achieving certain productivity levels when manufacturing widgets. After years of making widgets, some of the workforce suffer from arthritic hands and this results in them falling below the required productivity targets and, as a consequence, missing out on their annual bonuses. One of the group brings a claim for indirect disability discrimination, stating that the employer should have made some reasonable allowance for his disability when setting the annual productivity targets. The employer defends the claim on the basis that its approach was justified. The Employment Tribunal would have to determine the issue of justification on the facts of the case, as explained below.

b) A PCP might include any formal or informal policies, rules, practices, arrangements, criteria, conditions, qualifications or provisions. It also might include a policy or criterion that has not yet been applied, as well as a 'one-off' or discretionary decision.

c) Indirect disability discrimination is unlawful, even where the discriminatory effect of the PCP is unintentional, unless it can be objectively justified. According to the Equality Act, the imposition by an employer of a particular PCP will be objectively justified if it can be shown to be a 'proportionate means of achieving a legitimate aim', i.e.:

- the aim of the provision, criterion or practice must be legal and non-discriminatory (e.g. properly evidenced health and safety considerations may satisfy this element); and

- the means of achieving the aim must be proportionate: this involves a balancing exercise, weighing up the discriminatory impact of the provision, etc. on the individual as against the employer's reasons for applying it. Thus if there is a less discriminatory way of achieving the particular aim (e.g. annual productivity targets) than applying the PCP in question then the employer would have to adopt the alternative approach.

Disability-related harassment:

a) Person A will be guilty of harassing person B if A engages in unwanted conduct related to disability and A's conduct is intended to, or in practice has the effect of:

- violating B's dignity, or
- creating an intimidating, hostile, degrading, humiliating or offensive environment for B.

For example, teasing an employee about a facial disfigurement would be likely to amount to disability-related harassment.

b) Unwanted conduct covers a wide range of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour. Unwanted means 'unwelcome' or 'uninvited', and it's not necessary for the victim to expressly object to the conduct before it is deemed to be unwanted. A serious one-off incident can also amount to harassment on the basis that any rational person would have known that the behaviour in question would have been unwelcome.

c) As with direct discrimination, an individual is protected against disability-related harassment if the unwanted conduct is motivated by the fact that the victim is personally disabled, or because the harasser mistakenly perceives them to be disabled, or because of their association with another disabled person.

Victimisation:

a) The Equality Act protects employees against being discriminated against because they stick up for their own rights, or for the rights of another, not to be discriminated against: person A victimises person B if A subjects B to a detriment because either B does a protected act or else A believes that B has done, or may do, a protected act. A protected act is one or more of the following:

- bringing proceedings under the Equality Act;
- giving evidence or information in connection with proceedings under the Act;
- doing anything else for the purposes of or in connection with the Act; and/or
- making an allegation (whether or not express) that A or another person has contravened the Equality Act.

b) An employee cannot claim victimisation where he or she has acted in bad faith, such as making a false allegation of discrimination.

c) By way of an example: an employee is turned down for promotion because she unsuccessfully raised a grievance about her manager's jokes about a disabled colleague six months previously and she's regarded as a 'trouble-maker'. This would be unlawful victimisation: provided that the employee had raised her earlier grievance in good faith, the fact that it was not upheld would be irrelevant;

Additional forms of disability-related discrimination:

In addition to the four outlawed forms of discrimination described above, disabled people are protected against three other types of discrimination:

a) Prohibition on asking about health or disability during a recruitment process:

Save in limited circumstances*, an employer is prohibited from asking any job (or promotion) applicant about their health or any disability until the person has been:

- Offered a job either outright or conditionally (e.g. subject to a medical or suitable references), or
- Included in a pool of successful candidates to be offered a job when a position becomes available.

*(Such limited circumstances include: Determining whether the applicant needs adjustments for the recruitment or promotion process, monitoring diversity or where the question relates to the person's ability to undertake a fundamental aspect of the job in question).

b) Discrimination arising from disability:

i) This occurs where person A treats a disabled person B unfavourably because of something arising in consequence of B's disability, and A cannot justify the treatment.

ii) However, A won't discriminate against B if A can show that they did not know, and could not reasonably have been expected to know, that B had the disability.

By way of an example: dismissing an employee for disability-related sickness absence might amount to this form of discrimination unless it could be justified.

c) The duty to make reasonable adjustments:

i) An employer will be guilty of discrimination if it fails in its duty to make reasonable adjustments, which duty comprises three elements:

- Where an employer operates a provision, criterion or practice which puts a disabled person (e.g. a job applicant or existing employee) at a substantial disadvantage in comparison with persons who are not disabled, the employer must take reasonable steps to prevent that disadvantage;
- Secondly, where a physical feature of the employer's premises puts a disabled person at a substantial disadvantage in comparison with persons who are not disabled, the employer must take reasonable steps to prevent the disadvantage; and
- Thirdly, an employer must take reasonable steps to provide a disabled person with an auxiliary aid or service if this would avoid putting the disabled person as a disadvantage in comparison with persons who are not disabled.

ii) The costs of a reasonable adjustment should be borne by the employer and should not be passed on to the disabled person concerned.