



Line manager guide

Performance management

Sponsored by



In this guide:

Introduction	3
Recruitment	11
Ongoing performance management	20
Areas of improvement and adjustments	31
Performance appraisals	41
Grievance, disciplinary and capability proceedings	60
Appendices	73
About us	74

Introduction



This guide is for line managers – that’s anyone who has direct managerial responsibility for one person, a team or a department.

This guide makes it easier for you to recognise and realise the potential of disabled people who work for you.

It will help you to:

- **Set targets, goals and objectives** and decide when it may be reasonable to adjust these for disabled employees.
- **Give positive and negative feedback** to employees about their performance and how to implement performance improvement plans.
- **Identify the impact of a disability/ impairment or long-term condition** on the behaviour of an employee and what this may mean for the team as a whole.
- **Adjust disciplinary, capability, performance management and grievance processes** for the needs of disabled people or those with health conditions where appropriate.
- **Manage the needs and expectations** of your whole team including non-disabled employees.
- **Make sure you do not break the law.**
- **Know where to go for more help and advice.**
- **Realise the potential of everyone** who works for you including disabled people.

Performance management

As a line manager you have a vital role to play in enabling your team to work to the best of their ability.

It is down to you to ensure that the people you manage meet their objectives and performance targets. You are responsible for creating an open and supportive environment at work where employees can talk about any problems, and it is your job to help them develop and contribute to overall goals.

It is also your responsibility to take action if a member of your team is not performing to the standards required. In these situations it is particularly important for you to know your legal obligations and to act fairly towards anyone who is not performing well because of a disability, impairment or long-term condition.

You are required by law to make changes or 'reasonable adjustments' to help disabled employees, and those with long-term conditions, work to the best of their ability. Reasonable adjustments are not about treating some people more favourably but rather about recognising you need to treat people differently in order to treat them fairly and to enable them to realise their full potential.

By making adjustments you should be removing barriers faced by disabled people in the workplace because of their disability, or long-term condition, and therefore 'levelling the playing field'. Once barriers have been removed the performance of disabled employees can and should be held to the same standard as their non-disabled colleagues.

In some cases you will be recognising and rewarding good or exceptional performance and in others you will need to implement processes to try to improve performance. The only difference between managing disabled and non-disabled employees is that the performance of disabled employees must be assessed after adjustments have been made.

Learning how to make adjustments and manage people with both visible and non-visible disabilities is part of being a good manager. You should not think about managing disabled employees as separate to your other duties as a manager – good managers know how to manage difference, whether apparent or not, in order to get the best from all members of their team. Everyone is different, there is no such thing as a 'standard' employee.

There will be more about adjustments and how to make them in this guide.

I don't think I have any disabled people working for me

You may be surprised to find that in fact you do.

When we hear the word 'disability', often what comes to mind are images of white sticks, guide dogs, hearing aids and wheelchairs. However, there are only around 1.2 million wheelchair users in the UK, and only two thirds use their wheelchair regularly.^[1] The term 'disabled people' covers a wide range of different people with different impairments, or health condition, which may or may not affect how they do their job.

[1] NHS England 2016

Performance management

The legal definition of 'disability' is so wide that people you may not regard as disabled, or indeed do not think of themselves as disabled, are protected. That includes people whose disabilities are not obvious and those who acquire a disability while working for you. The majority of disabled people are not born with a disability but become disabled at some point in their working life. The prevalence of disability rises with age: only 7% of children have a disability, compared to 18% of working age adults and 44% of State Pension age adults^[2] – so as we live and work longer, it's becoming even more likely that many of us will be working with a disability at some point in our lives.

Many disabled people have fluctuating conditions which can result in fluctuating performance depending on the effect of their disability on them at any given time.

There is little point in trying to work out if someone meets the legal definition of disability. It is a legal – not a medical – definition. The only way to know for certain if someone meets the definition is by going to a tribunal or court. A doctor will not be able to tell you. The most they will say is that the person is 'likely' to be protected by the disability provisions of the Equality Act.

[2] Family Resources Survey 2015/2016.

Performance management

The best practice approach that will make it easier for you to do your job as a manager, is to assume someone has a disability or health condition if they need adjustments to the way they do their job. You also have a legal obligation to make reasonable adjustments for any disabled person who is having significant problems at work whether or not they have explicitly told you about their disability. This means you must consider it possible that someone who is not performing well might have a disability, or health condition, that might not be immediately apparent or be in the process of managing a newly-diagnosed disability affecting them at work.

They may not be aware they have a disability themselves. It is down to you to try to find out why they are underperforming at work, to get more information if necessary and to identify and implement adjustments that will help the person to improve their performance and maximise their contribution.

By moving straight to identifying and removing the barriers they are facing, you will improve the performance of everyone in your team and find that whether or not they would legally be considered disabled becomes less and less important.

Non-visible disabilities

Many disabled people have conditions which are not immediately apparent, for example:

Visual impairments.	Hearing impairments.
Speech impairments.	

...or are not apparent at all, for example:

Diabetes.	Dyslexia or dyspraxia.
Epilepsy.	Asthma or other respiratory diseases.
Autism.	Cognitive difficulties.
HIV.	Cancer.
Heart disease.	Gastric problems like irritable bowel syndrome or colitis.
Mental health conditions like depression, anxiety, schizophrenia or bipolar disorder.	

What is performance management?

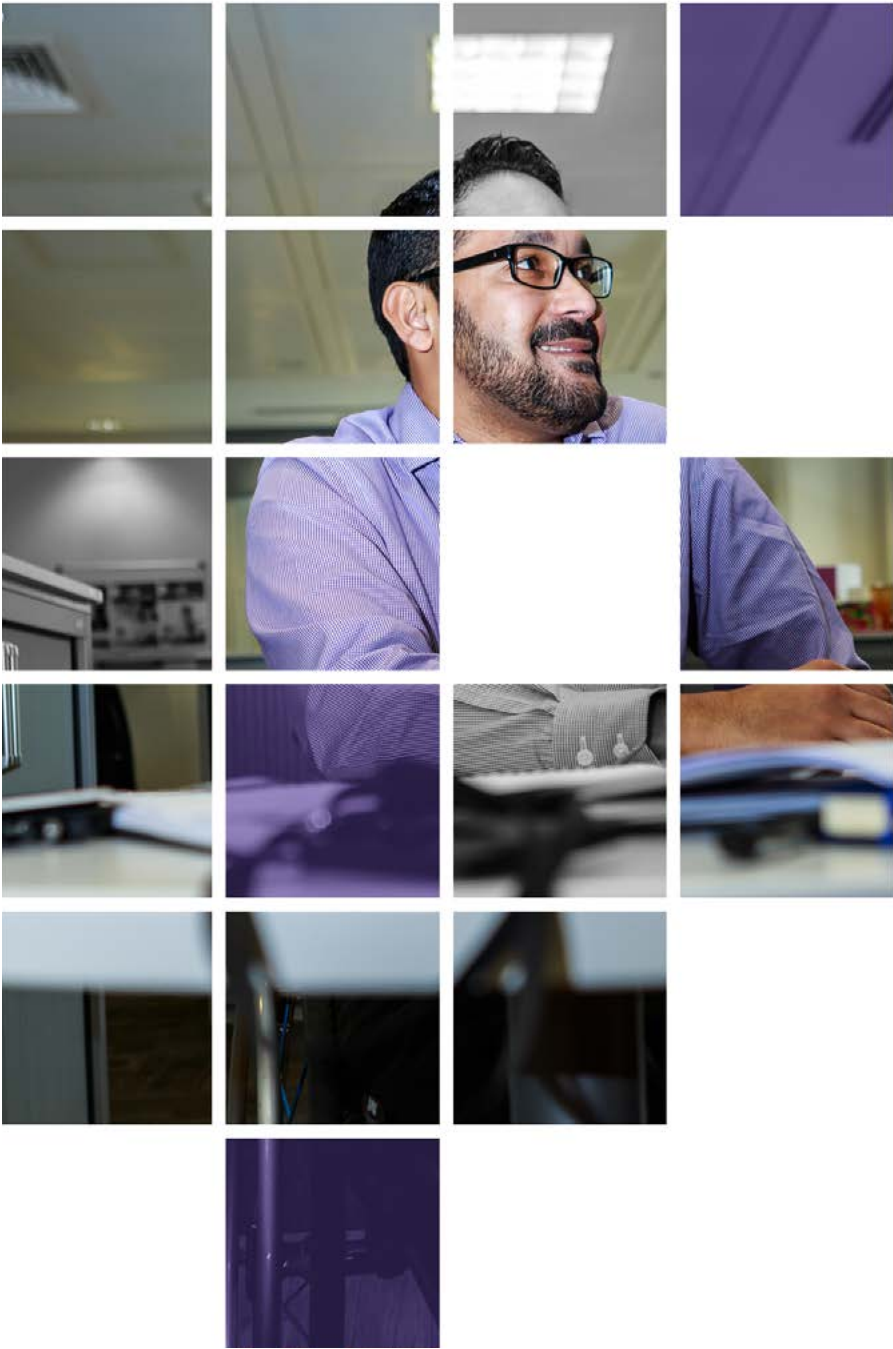
Performance management is more than just performance appraisals that take place every year. Performance management is an ongoing process that includes:

- Setting clear and realistic goals, objectives and targets.
- Coaching and developing employees.
- Providing regular informal feedback.
- Formally evaluating performance (at appraisals, development reviews or similar).
- Recognising and rewarding good performance.
- Developing action plans to improve performance where necessary.
- Considering long-term career development.
- Identifying training and development needs and how they should be met.

Employees who have clear direction from their manager and receive regular feedback on how they are doing have higher levels of job satisfaction and are more likely to want to stay with your organisation.

As a line manager you have a vital role to play in enabling your team to work to the best of their ability.

Recruitment



Think about the essential tasks required in the role before the recruitment process begins.

Consider right from the start whether the job could be done with adjustments; for example from a different location or from home or with adaptive software. This will help make sure you recruit the strongest candidate, by assessing everyone against the key competencies the role requires and ensuring disabled candidates can compete on a level playing field with everyone else.

For more on disability, recruitment and getting the right person for the job see Business Disability Forum's briefing paper 'Managing recruitment'.

Starting work and the probationary period

Although it isn't a legal requirement most organisations have a probationary period for new employees during which their performance and suitability for the role continue to be assessed. Probationary periods should be for a fixed period of time – usually three or six months depending on the job and the seniority of the position, with more senior positions having longer probationary periods.

In essence the period should be long enough for the employee to learn the key elements of the job and for you as the line manager to assess whether the new employee will be capable of fulfilling the requirements of the role.

Performance management

Probationary periods should be structured to allow you to assess and review the new employee's performance, capability, training and development needs and suitability for the role. Remember to explain this to the employee. It is important they understand that if their performance is not satisfactory they may not be retained in post.

Employees who need adjustments will only be able to demonstrate they can do the job to the standard required if they have adjustments in place and working effectively. If the adjustments are in the form of equipment or technology try to ensure they are in place before the person starts work. If the adjustments are to working hours or location, allow the person to work the hours, and from the location, agreed during the probation period as they would after the probation period. This enables you to assess their ability to do the job to the required standard once they are confirmed in post.

During the probation period you should:

- Regularly monitor the new employee's performance at progress meetings.
- Identify and discuss any problems as soon as possible.
- Provide regular constructive feedback, support and guidance.
- Provide any necessary training and coaching.
- Review adjustments to ensure they are still effective.

Employees can only demonstrate their capabilities and suitability for the role if they are clear about what is required from them.

Performance management

This means that at your first meeting you must ensure the new employee understands:

- What outputs or deliverables are required from them by the end of the probationary period, i.e. what do they have to achieve and by when.
- The standard of performance required of them, i.e. what does good look like and what is not good enough, illustrated with examples.
- How their performance will be measured, i.e. any standards or measures you regularly use. These could be from data collected electronically, quality control measures or feedback from customers or colleagues.
- What standards of conduct or behaviour are required which may include how they dress or liaise with clients and colleagues.
- Any areas where they will need to develop their skills or knowledge.
- What they should do if they are experiencing problems or if adjustments aren't working effectively.

Progress meetings

You should meet the new employee to discuss progress at least once a month during the probationary period. It is a good idea to put these meetings in both your diaries as soon as the employee starts work. This should stop them slipping or being forgotten – particularly when you are busy.

Employees need to understand that progress meetings are a time when open and confidential discussions can take place on a one-to-one basis with their manager about their performance.

What to do at progress meetings:

- Ask the employee how they think they are doing.
- Start by giving positive feedback on what's going well and give examples, i.e. 'the report you wrote was clear and well structured' rather than making general statements such as 'you seem to be doing well'.
- Explain clearly where the standards you require are not being met, again by giving examples, and explore together why that might be, e.g. 'We didn't get that client. Why do you think that was?'.
- Discuss any training and development needs.
- Agree an action plan stating what needs to be done by the next progress meeting, by whom and by when. This should include your actions as well as those of the employee. Action plans will help you monitor progress.
- Keep good records of what is discussed at these meetings including what has gone well and areas in need of improvement, steps to improve performance, training and development plans and most importantly any adjustments identified as necessary and a timetable for their implementation and review. A 'Tailored adjustment plan' will help you keep a record of what has been agreed and provide a framework for future conversations about adjustments. A template for a 'Tailored adjustment plan' can be found in **Appendix three**.

What not to do

- Try not to cancel, postpone or delay meetings or to cut them short or allow interruptions.
- Do not use negative or accusatory language, i.e. 'your weaknesses' or 'failures' but rather explain where the employee has gone wrong and what they need to do in future.
- Do not assume that if targets are missed or performance has fallen short that this was the fault or even within the control of the new employee. Get the facts and remember there may be barriers you need to remove for the employee particularly if they have a disability, or long-term condition, they might or might not know about.

It is a good idea to put these meetings in both your diaries as soon as the employee starts work.

Final review

You must schedule and hold a final review meeting at which, hopefully, you will confirm the employee's appointment. If you don't hold this meeting the employee's employment will be confirmed by default which may not be what you wanted.

It may be necessary in some cases to delay this confirmation because the employee has not demonstrated they are capable of doing the job for which they were employed because:

- Adjustments they needed have not as yet been identified or implemented for long enough to assess performance.
- The employee has been absent from work due to sickness or some other reason.
- Performance has not improved even after training and adjustments.

Extending probationary periods

In these instances you may need to extend the probation period.

Adjustments have not been implemented

In some cases the employee may have started work before you were able to put adjustments in place. This might be, for example, because they were delayed in starting work while the appropriate technology was put in place. If the person's employment started before adjustments were put in place you should assess their performance from the time the adjustments were effective. This ensures that you are assessing their true ability to perform in the role, rather than penalising them for delays that were not their fault.

In other cases neither you nor the employee might have been aware there was a need for changes in the way they worked:

- Because neither you nor the employee were aware they had a disability, or long-term condition, or
- Because you didn't know how the disability would affect the person doing the job.

You will then need to identify the barriers that the individual is facing and put adjustments in place to remove these.

Depending on the nature of the adjustments this could take some time. You may have the authority and ability to implement some adjustments yourself relatively quickly, for example changes to working hours, but for others you may need permission from your own manager or appropriate department. For more guidance on how to implement adjustments in practice, see our line manager guide on 'Making adjustments'.

If by the end of the agreed probation period you don't know if the new employee is capable of doing the job because they have not had the adjustments they need, you should extend the probationary period.

The law

Probation periods should not be extended indefinitely without confirmation or dismissal. This is an unsustainable situation, and an employee whose contract is terminated after two years of working continuously with you can make an employment tribunal claim if they believe their dismissal was unfair.

This means you must assess a new employee's performance from the day they start to work for you and take steps quickly to help them improve if their performance does not meet your expectations. If it turns out the employee is not in the right job, it is better for everyone to find this out quickly and allow the employee to move onto something that suits them better.

If adjustments are not implemented in a timely fashion during the probation period and the employee is subsequently dismissed they may also be able to claim disability discrimination. They do not need to have worked for you for two years to do this.

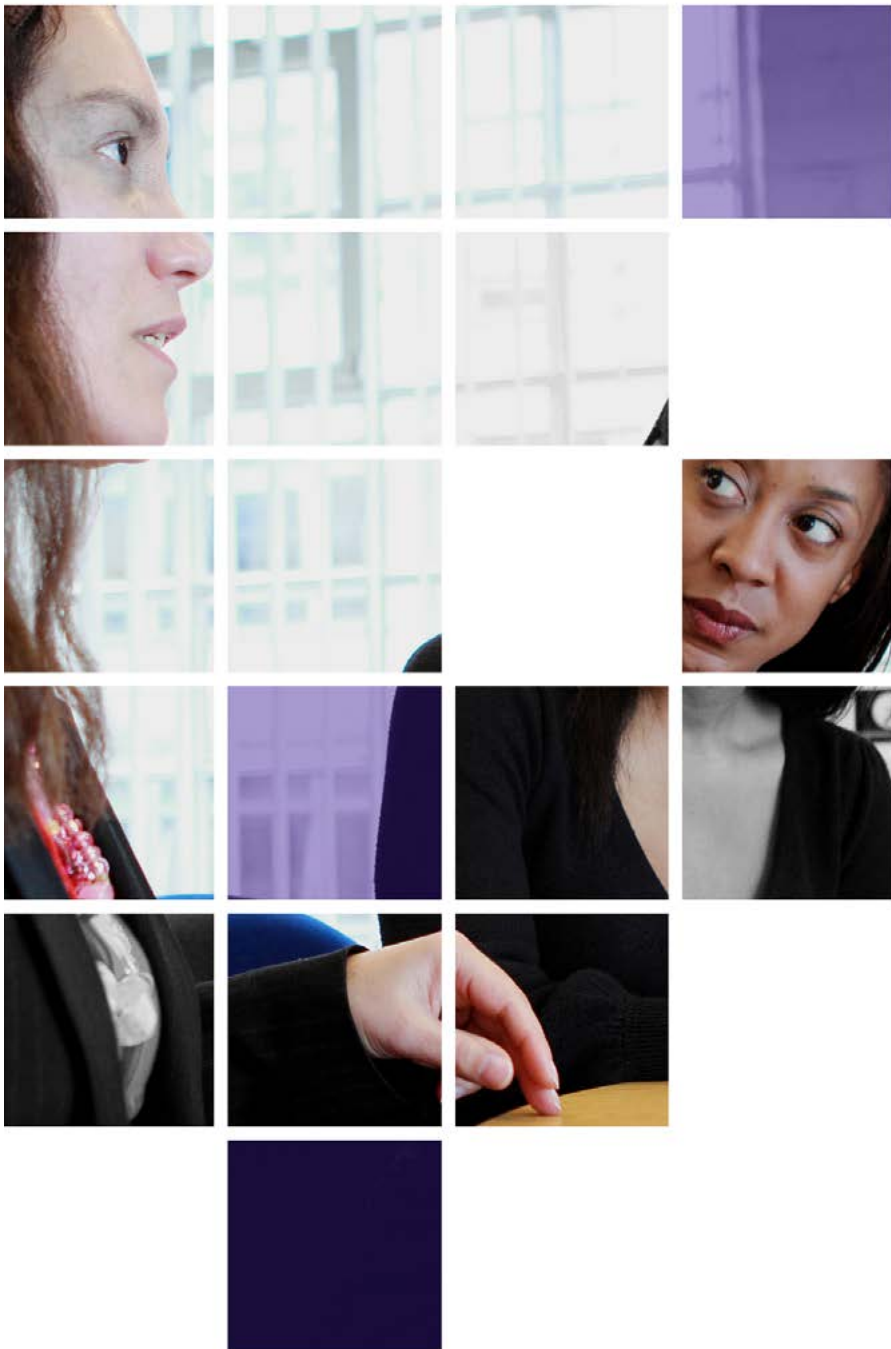
It is vital to identify the adjustments needed and implement them as quickly as possible. You can then assess whether the employee will be able to do the job for which they were hired, the help and training they may need, or if they are unsuited for the role.

You may need the help of your colleagues to ensure this happens but it is your job to ensure it does happen. For more on making reasonable adjustments see Business Disability Forum's Line manager guide 'Making adjustments'.

Terminating the employment contract at the end of the probationary period

If an employee's performance does not improve after adjustments and training plans have been implemented and (perhaps) the probation period extended, you may need to terminate their contract of employment. In these cases you will be dismissing the employee because they are not capable of doing the job. This is a fair reason for dismissal if you have done everything you reasonably can to help them perform to the required standard.

Ongoing performance management



The need for regular meetings between the line manager and employee does not end as soon as the person is confirmed in post.

Performance management is ongoing and managers need to have regular review meetings with their staff.

The frequency of these meetings will depend on the experience and seniority of the staff member; more senior or experienced employees generally needing less frequent meetings.

The purpose of these meetings is much the same as for the progress meetings during the probationary period. Review meetings should also be confidential and on a one-to-one basis.

Did you know?

One in five people in the UK have a disability or long-term condition — that's around 13.3 million people

Source: Family Resources Survey 2015/2016.

Performance management

Not every meeting will need to include everything listed below but they are an opportunity for you to:

- Catch up on work the employee is doing and to monitor workload.
- Provide constructive feedback and in particular to praise good performance and to talk about areas where improvement may be needed.
- Talk to the employee about any changes in their performance or behaviour. This could be related to problems at home or work or because the employee has developed a disability, a health condition, or an existing disability has worsened. Remember they might not be aware they have a disability.
- Talk about changes in the way the employee works either on a temporary or permanent basis that may help overcome problems.
- Consider whether the employee needs to be referred to an occupational health adviser to help identify the problems they are having at work and adjustments that would overcome them.
- Discuss development and training needs.
- Review adjustments to ensure they are still effective. A good way of doing this is by using a 'Tailored adjustment plan', a template for which can found in **Appendix three**.

Keep good records of each review meeting detailing any action to be taken and by whom. At each meeting you should refer to the notes from the last meeting.

Dealing with poor performance

If you have concerns about an employee's conduct or performance you should deal with this as soon as possible. Providing and receiving constructive criticism or negative feedback is difficult and both of you may be feeling defensive. It is important to be well prepared and to have the facts to hand. Concentrate on giving examples and try to avoid discussing personalities.

Always bear in mind that the person's performance might be affected by a non-visible disability or long-term condition.

This could be a disability or long-term condition, they are as yet unaware of or one newly diagnosed. It could also be a fluctuating or progressive condition or a disability they have had for some time but is only now having an effect on their work, either because it or their medication has changed, or because their work has changed.

You must ensure the person doesn't think they are being disciplined when you first talk to them about your concerns. Start by giving positive feedback before moving onto how you would like to help improve performance in areas where they are not being as effective as you would like.

It is always better to ask 'open' questions rather than ones allowing for a 'yes' or 'no' answer. This will encourage the person to talk... and you must listen carefully to what they say.

Performance management

Examples of open questions that may identify why someone has not been performing well:

- Why do you think you missed the deadline for the report?
- What do you think is stopping you from getting into work on time?
- Why do you think you got so upset/angry when talking to X?
- Why do you think you didn't meet your call target?
- Why do you think you're not closing sales?

An employee may simply apologise and say they will try to improve without answering your questions. If you just accept this you are likely only to delay having to deal with the issues – especially if the person has a disability (whether known to them or not) or long-term condition that means they need changes to the way they work.

You need to press gently for answers while giving reassurance that you want to help. They should understand they are not in trouble yet but rather that their performance does need to improve.

You then need to drill down with more specific questions to try to find out exactly what the problems are and to find possible solutions.

Performance management

Be specific about:

- The tasks or behaviour you want to talk about – give dates and examples.
- What you expected from the person.
- How their performance or behaviour fell short of what you were expecting.
- What you want to change and by when.
- What will happen if there is no improvement.

When talking to an employee about their performance

- Choose an appropriate time and place.
- Describe how the person's performance fell short of the required standard with specific examples.
- Talk about the work and not the person, for example 'The sales figures for last month' rather than 'The way you talk to customers'.
- Describe exactly what needs to change and what good performance looks like.
- Try to establish the reason for the poor performance and identify solutions or adjustments.
- Describe the help and support you can provide.
- State clearly what you will do next if the performance does not improve.

Scenario one

Jo,

Regional
sales

Jo has been waiting for a report on sales and future strategy from Sam, one of the regional sales managers.

When she finally receives it late she is disappointed by its poor structure and errors in the information presented.

Jo decides to talk to Sam about the report and books a quiet room. Jo asks Sam why she wasn't able to complete the report by the deadline. Sam tells Jo she's sorry it was late and that it won't happen again. Jo accepts Sam's apology but asks again why it was late – what was it that prevented Sam from getting it done on time?

Sam then tells Jo she has dyslexia which means she can find it difficult to concentrate in the office especially when she is interrupted by colleagues asking questions. Jo asks Sam what sort of questions she was being asked and Sam tells her they were all about operational matters. Jo asks Sam why she didn't ask her colleagues to speak to other members of the team as these were relatively simple queries. Sam says that as she knew the answers it seemed simpler to do it herself.

“

Jo decides to talk to Sam about the report and books a quiet room.

Jo then asks Sam how she found writing the report. Sam admits answering questions from colleagues was easier than writing the report. Jo asks Sam about a particular section detailing past sales and future projections and points out the calculations are incorrect. She also asks Sam why this section is in that part of the report as it doesn't naturally seem to fit there.

Sam says she has never been particularly good with numbers and working in the office with the noise and interruptions probably meant she became muddled. She also worked on that section separately and inserted it later but may have put it into the wrong place.

Jo asks Sam to take another look at the report and this time set aside some quiet time to work on it. Jo suggests Sam tells her colleagues she is not to be disturbed and diverts her phone to voicemail or alternatively works from home on the report. Jo says she would like the amended report by Friday and this time the figures must be accurate, and so Sam should check them before she submits the report. Jo would also like Sam to read the whole report again and think about where this section fits best and restructure it accordingly.

Jo also tells Sam she should not be spending her time on the low level operational queries. She would like Sam to pass these to other members of the team to answer. Jo and Sam agree that if these adjustments don't help they will talk about getting help from a dyslexia expert to identify further adjustments.

Performance management

When talking to an employee about their performance ensure you know the minimum or mandatory aspects of the job the person does and where they have been doing well and where there is cause for concern.

Examples of common areas of concern are:

- The quality of the work.
- The quantity of work and the speed at which it is being done.
- Working relationships and communication skills.
- Timekeeping.
- Planning and organisational skills.
- Initiative and motivation.
- Supervisory abilities.

Suggestions for how performance in these areas may be improved with adjustments are given below.

Having outlined your concerns clearly and with examples, you need to move on to ways in which you can help the person to improve.

Talking about health and disability

If the person appears to be in pain or distressed don't be afraid to ask them about this by saying something like:

“I've noticed you seem uncomfortable at your desk/have been taking painkillers quite a lot/been rather upset recently. We need to talk about this. If it's something to do with work, perhaps I can help?”

In many cases this will be enough for the person to reveal that, for example, they have back pain or have been getting bad headaches. These could be caused by their workstation, or by overhead lighting or noise in the workplace.

You should ask what they think is causing the problem and if necessary talk to your HR team about whether it would be appropriate to refer them to your occupational health adviser or another specialist.

You should never ignore an employee who is distressed at work. If they have been crying or had an angry outburst, talk to them to try to discover the cause. Again, if you are reassuring and they don't think they are in trouble they may be willing to tell you what's wrong.

In some cases the person you are talking to may insist nothing is wrong. If you point out behaviour or work you have concerns about they may become defensive and find excuses or blame others. This is why it is important to ensure you have all the facts before you speak to an employee who is underperforming. You need to be able to refer to work the individual has done or specific behaviour you want to discuss.

In other cases the person may accept their work or behaviour has been unacceptable and will promise to improve, but refuse offers of help.

Performance management

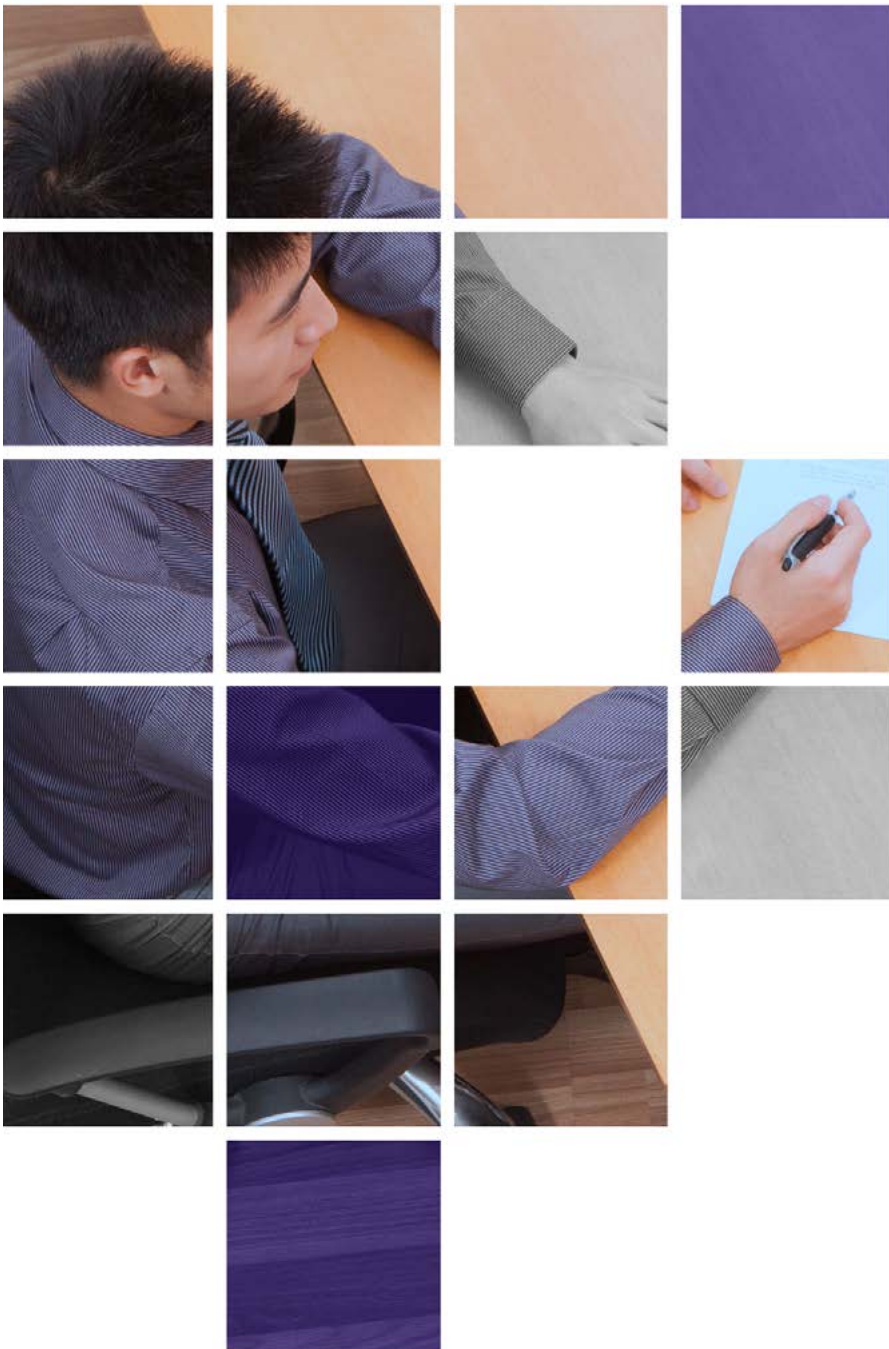
In either case, if the person doesn't want to talk about problems outside work or health concerns, you cannot insist they do so. It is not your job to try to diagnose a disability. Suggesting they might have a disability, for example dyslexia or a mental health problem, is likely to go down badly.

Whether disabled or not, all employees need to know what you require of them, and what is and what is not an acceptable standard of work and behaviour in the workplace.

Employees need to understand that if they refuse your offers of help and adjustments and their performance continues to fall short of minimum standards, they do ultimately risk capability proceedings being taken against them.

**You should never ignore
an employee who is
distressed at work.**

Areas of improvement and adjustments



Listed below are some common areas where employees fail to meet required standards, followed by suggestions for adjustments that may improve performance in these areas.

These are just suggestions; every employee and situation is different. As a manager you must talk to the employee about the issues that concern you and identify possible solutions. You may need to seek help from experts such as your occupational health adviser, HR team, IT and facilities teams or Access to Work (AtW) (see **Appendix one**) to find the best solutions.

Quality of work

Problems with accuracy, comprehension or retaining information may be overcome by:

- Software that reads out text so the person can hear what they have written and spell checking software that can be set to correct common mistakes.
- Reducing interruptions either by providing a quiet space, allowing the person to have a 'do not disturb' sign and diverting telephone calls to voicemail or someone else, or working from home from time to time.
- Additional training and support.

Quantity of work or speed

A new employee may work more slowly simply because they are unfamiliar with the work and the person will get faster as they gain more experience. In some cases the speed at which the person works may be improved by:

- A change in seating, lighting or temperature to make the person more comfortable or to reduce pain.
- Allowing more breaks or permission to eat at their workstation to keep up blood sugar levels or working from home from time to time to reduce tiredness caused by commuting.
- Software that reads out text and spell checking software.
- More appropriate computer equipment, e.g. keyboard, mouse or monitor.

Working relationships and communication skills

Most managers want employees who display a positive 'can do' attitude and who get on well with fellow team members and customers/clients. You do need to consider, however, how important these attributes are for the essential tasks the person has to perform. Someone with a disability like autism, depression or who is managing pain may find it difficult to display these behaviours all the time.

You may need to:

- Agree a method for the employee to tell you they are having a bad day so you understand their behaviour and perhaps allow them to work undisturbed.

Performance management

- Agree what to tell colleagues. The person may not want their colleagues to know precise details of their disability, impairment or health condition, but you could agree that people working closely with them will be told what behaviours to expect and why, or perhaps even be given some information or training about the particular disability, e.g. mental health or Asperger's syndrome awareness training.
- Provide coaching or mentoring to help them understand the workplace, expected behaviours and how to interact with the team.

For more guidance on managing behaviour and interpersonal issues that might be related to a disability, see Business Disability Forum's line manager guide on 'Managing workplace behaviours'.

Timekeeping

First be precise about the nature of the timekeeping problems. Is the person persistently late in the mornings, do they take too long at breaks or are they often late for meetings? Then try to work out why they are late and what may help them to be on time.

- Is it essential for the person to arrive at a certain time? If not, then allowing flexible working may help, e.g. from 8am to 4pm on one day and from 10am to 6pm another if they get tired or are having problems travelling during the rush hour.
- If it is essential for them to be at work at a certain time explore whether they could log on remotely so they do not have to travel on days when they are in particular pain or experiencing fatigue. Some people may benefit from help with planning their journeys so they know when they need to leave home in order to be on time.

Performance management

- If they are late coming back from breaks or for meetings it might be because they are easily distracted or get so caught up in their work they lose track of time. Reminders on their calendar with pop up screens or a wrist watch alarm might help.
- They might need some additional time in the morning to check their diary and plan their work for the day.

Planning and organisational skills

If an employee fails to meet deadlines, struggles to prioritise their work or to manage reasonable workloads, consider:

- More supervision to help the person understand their job role better and prioritise their work.
- Manageability of the workload. Does the employee have additional duties?
- Professional assessments to find out if the employee has a disability such as dyslexia. If so, provide coaching to help the employee with planning.

Supervisory ability

If an employee is not providing adequate leadership or supervision to people they manage, consider:

- Training on management skills, time management, leadership or assertiveness.
- Does the person's workload and objectives mean they do not have enough time to manage their team effectively? In this case you may need to reallocate some of their duties or help them to delegate.
- A mentor who is an experienced supervisor or manager.

Performance management

In some workplaces, there is an assumption that someone in a more senior role must have line management responsibilities. This can be a big jump for many employees who may be technical experts but lack management experience or find that it does not suit their skills or personality. Consider how important line management really is to this person's job – if they are an excellent computer programmer, for example, is it helpful for them to be spending their time managing others, which they may be less comfortable doing, when they could be working on complex projects that make the most of their skills?

Initiative and motivation

In order to progress in their career, employees often have to demonstrate they can act on their own initiative, are self-motivated and willing to volunteer for additional duties or involvement with the organisation. If one of your team is not displaying these qualities, consider:

- Is the employee performing their core duties well? Some employees are happy doing their job and do not want promotion or to progress in their career. This is something that needs to be explored with the employee.
- Are adjustments needed to reduce pain or fatigue so the employee has more energy to devote to their job?
- Does the employee lack self-confidence? They may benefit from additional training or a mentor.

Managing the performance of remote workers

Remote team member or manager

Remote working is on the increase and can present some unique challenges for line managers. Remote workers can be:

- Employees who work in a different location (and sometimes in a different country) to their manager.
- Employees who travel or work in the community, e.g. lorry drivers, delivery staff, community nurses and sales people.
- Employees who work from home including disabled employees who do so as an adjustment.

If you are managing employees in any of these categories you won't be able to spot changes in behaviour or performance as quickly as you would if you worked in the same place. Regular review meetings to ensure ongoing performance management are, therefore, even more important.

All remote workers must stay in touch with you and colleagues by telephone, video conferencing or, if possible, at face-to-face meetings and training sessions. It's a good idea to structure these meetings where you can address any issues or concerns and talk about workload. This is more effective than a general chat to see how things are going.

Remote workers won't have the same opportunity to talk to you informally throughout the day or check things with colleagues in person. It is, therefore, important that they know what authority they have to make decisions. Ensure lines of authority are clear and that remote workers know when they need to check with you when making decisions and how to do this and when they can make decisions themselves.

Performance management

All employees benefit from clear lines of authority and an understanding of their remit and responsibility. Lack of clarity can be a major cause of stress and can result in poor performance. Remote workers can find this even more difficult.

Some types of remote workers face particular challenges:

Employees who work in a different office, site or country

- Scheduling regular meetings may be more difficult – particularly if you are in different time zones. Find times to suit you both and ensure these meetings by telephone or video conferencing take place regularly and are confidential.
- Try to familiarise yourself with the cultural norms of the place where the employee works. Not only may your employees work different hours from the UK office, they may also have different cultural attitudes towards authority and disability or ill-health. This may mean they find it difficult to talk about disability or health-related poor performance. Ensure they are aware of your and your organisation's commitment to best practice on disability and they know you will make adjustments to help them do their job.

Employees who travel or work in the community

- Employees who travel or drive for long distances may be prone to neck and back problems and fatigue. Take active steps to ensure they are taking regular rest breaks and refer them for an occupational health assessment quickly if there is any suggestion they are developing health problems. Swift intervention and implementation of adjustments may prevent problems later and in particular a disability deteriorating or developing.
- Talk to employees who work alone about how they are dealing with the isolation. Check if you have a lone worker policy and routinely carry out risk assessments for lone workers if they are visiting members of the public alone, checking that the equipment they need to stay in touch and safe, such as mobile telephones and alarms, are in good working order.

Employees who work from home

- Employees who work from home need a proper workstation. Ensure a workplace assessment has taken place. Disabled employees may need a particular type of desk, chair or computer or keyboard and telephone. You may need to talk to colleagues in HR, Health and Safety and IT to make sure these assessments take place and adjustments are implemented in the employee's home.
- Make sure employees who work from home understand when they are supposed to be working. They should not be doing other work at the same time and so need to make sure that if they have caring responsibilities for children or an elderly or disabled family member adequate cover is in place during working hours.
- You may also need to ensure employees working from home don't overwork. This can become an issue as employees blur work and home life and sometimes over compensate by working far longer hours than they would if they went into work at a different location. Remind them of the need to take regular breaks.

Managing remote workers may require you to change how you manage people and assess and measure performance. Experience has shown that most people allowed to work in their own time and in the location of their choice respect the freedom they have and work hard.

In a conventional office environment, we often informally assess employees by looking at the 'input' – the way in which they accomplish tasks and the amount of work they are putting in. This isn't realistic with remote workers, and you may need to consciously shift the way you assess their performance to what really matters; 'output'.

Performance management

Performance measures when managing input may be:

- Hours worked.
- Attendance or visible presence.
- Visible effort.

Performance measures when measuring output may be:

- Goals or objectives achieved.
- Work delivered on time.
- Contribution to the organisation's overall targets.

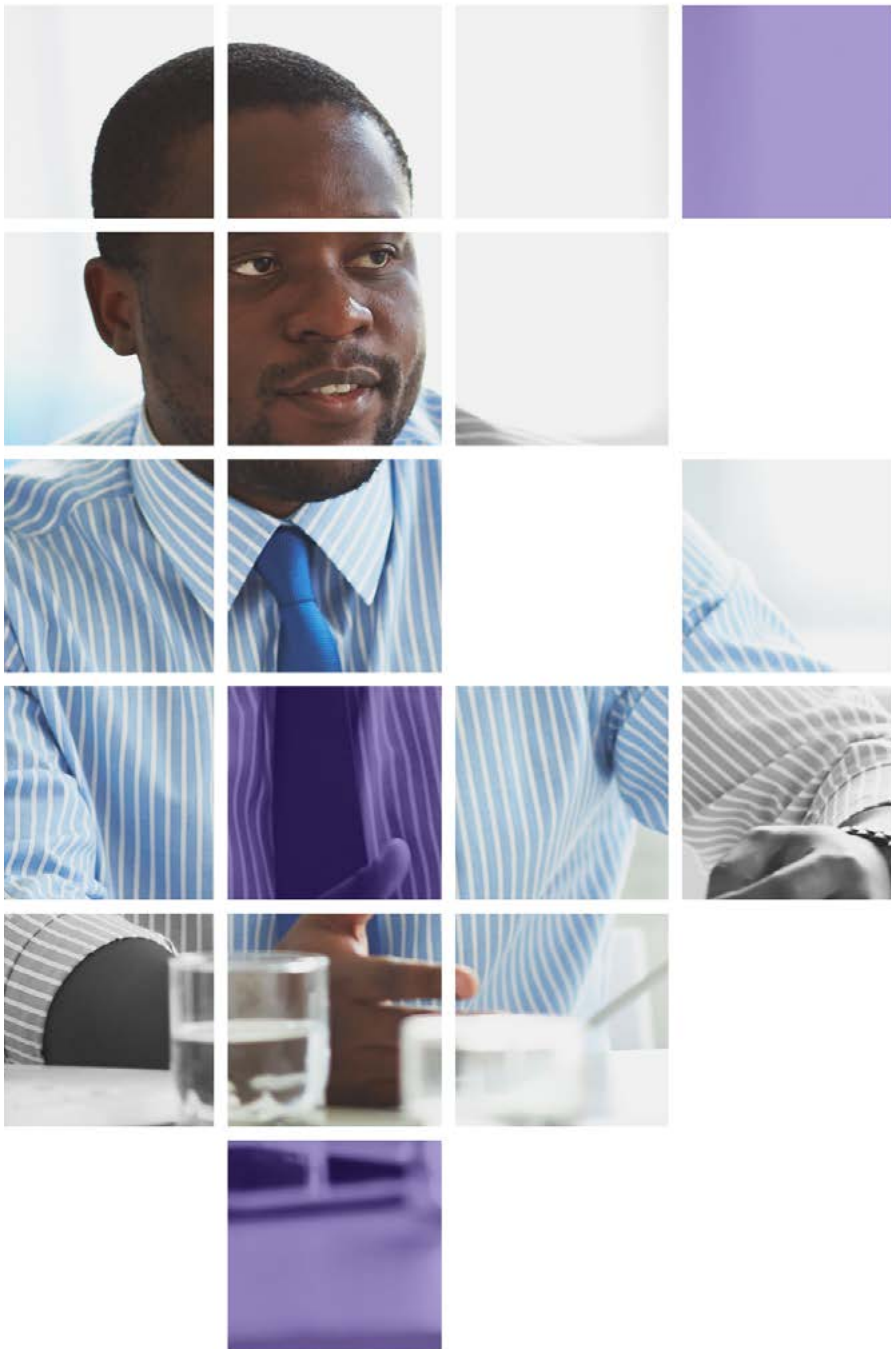
An employee who puts in long hours in the workplace will not necessarily produce more or better quality work. Indeed, if they take significantly longer to accomplish the same output as everyone else, they are not performing well and may require training, support, or adjustments. Measuring output, as in objectives achieved and work delivered, as you must for remote workers may therefore be better for all employees, remote or not, and the organisation as a whole.

It may have the added benefits of preventing employees from developing stress, depression and anxiety disorders from spending unproductive hours in the workplace and free you up as a manager to produce more.

Electronic monitoring

It may be possible to monitor remote workers in your organisation through their computer or mobile telephone usage. Be careful, however, as such monitoring may be unlawful and should not be done without the employee's knowledge and consent. Check your organisation's policy on this before evaluating an employee's performance on this basis.

Performance appraisals



If you are managing the performance of your team well, performance appraisals will be meetings at which nothing new is discussed.

Employees should not be surprised by what you say to them at their appraisal. Instead they should be constructive discussions about how the employee contributes to your organisation and their development as a valued member of the team.

All too often performance appraisals are dreaded by both manager and employee; viewed as tedious form filling exercises or the scene of conflict and disagreement.

If appraisals are to be productive for both parties, performance should be managed on an ongoing basis. This means having notes from the probationary progress meetings and/or regular review meetings to consider prior to the appraisal.

Performance appraisals are an opportunity to:

- Review past performance.
- Set objectives for the future.
- Help every employee to improve their performance.
- Discuss career development and possible promotion.

Performance appraisals should not be used to:

- Raise performance concerns for the first time.
- Instigate disciplinary proceedings or performance review measures for conduct or performance.
- Air views about the employee based on assumptions or personal prejudices even if, or indeed particularly if, you don't like the employee!

Preparing for appraisals

A successful performance appraisal requires preparation:

- Consider your progress meeting notes from the probation period or from regular review meetings since the last appraisal. Remind yourself of examples of good performance and those where the employee's conduct or performance was not of the standard required. The appraisal must be based on facts not generalisations.
- Obtain and read feedback from customers, clients and appropriate colleagues (bearing in mind they may not be aware of the person's disability, long-term condition or need to work differently). Some organisations have 180 or 360 degree appraisals making this a requirement. It is also particularly important for managers who do not work in the same location as the employee who may, for example, work from home as an adjustment.
- Read the employee's job description to remind yourself what the person was employed to do and to check if the role has changed significantly. A new job description may be needed.
- Read the last performance appraisal if there is one, whether with you or from a previous manager, to remind yourself of the employee's objectives for the period being assessed.
- Read records of adjustments agreed with the employee. These may have been adjustments you agreed or were implemented by a previous manager. Some organisations use a 'Tailored adjustment plan' to record such adjustments. An example of such an agreement can be found in **Appendix three**.

Ensure you have facts and examples to support your discussions about specific areas of performance, either good or in need of improvement.

Looking forward – setting objectives

Appraisals should also be about setting objectives for the future.

When setting objectives try to take a broad view of the employee and their potential and so, as well as setting specific job objectives, think about career and training goals that will help the employee develop their skills and abilities. Always consider adjustments needed for the person to achieve objectives.

Objectives should:

- Be clear and precise about what needs to be done.
- Be measurable.
- Challenge the employee but still be achievable.
- Describe the output or end result required.
- Have realistic timeframes.

Most importantly objectives should be agreed with the employee and not be seen as 'imposed'.

Career development and mentoring

An important aspect of performance management is career development. However, 33% of employees consider a lack of targeted development opportunities for disabled employees to be a real barrier to their progression within an organisation.[3] Line managers should talk to every employee, including those with disabilities, about where they see their career going and help them identify the skills they need to acquire in order to progress.

When talking to disabled employees about career progression consider:

- **Training needed to acquire or develop specific skills or knowledge.** These are discussions you should be having with every employee, and remember you must ensure all training is accessible for disabled employees.
- **Personal development training.** Many employees, whether disabled or not, will benefit from training that helps develop confidence and understand their personal strengths and weaknesses. Such training may be particularly helpful for disabled employees who have not done well in mainstream education or have not been in employment before.
- **Leadership training.** Don't assume disabled employees don't have the potential to become leaders. If you spot potential in any employee encourage them to realise this with leadership training.

[3] Selvenera, G. and Whippy, K. (2015) State of the Nation: Retaining and developing employees with disabilities. Business Disability Forum

Performance management

- **Buddies** are usually employees who are on the same level or grade or do the same job as the person they are 'buddying'. A disabled employee may find it useful to have a buddy when they first start work or when they are promoted. The buddy's role is to help the employee understand how to do the job and introduce them to colleagues by accompanying them to meetings and work-based social events. Buddies can be particularly helpful for employees with learning disabilities or autism or Asperger's syndrome.
- **Mentors** are usually in a more senior role and one to which the person being mentored may aspire. Mentors can be internal or external – more senior employees often have a mentor in another organisation who can be more objective and help the person to achieve their overall career goals.

For more information about training and mentoring or buddying schemes available in your organisation talk to your HR or diversity teams. You can also obtain information about external schemes by contacting Business Disability Forum on **+44-(0)20-7403-3020**.

Performance management

Not every employee wants to progress. Talk to your employees about their life goals. Some people are happy with the job they have because it pays enough, is in the right location, fits their skills and abilities and leaves them enough time for external interests.

Some disabled people are reluctant to move from a job they are doing well, has the necessary adjustments in place and they can manage. You will need to get to know the people who work for you to understand their needs and aspirations. Try to find out if a disabled employee does not want to progress because they are genuinely happy with their current job or because they fear they will lose their adjustments or a good and understanding manager if they leave.

If it is the latter you can help by supporting and reassuring them. A 'Tailored adjustment plan' (see **Appendix three**) will help to take their adjustments with them to a new role and manager in the same organisation if it is appropriate to do so. Personal development or leadership training may help to gain the confidence they need to realise their potential.

Most importantly, talk to the individual and don't make assumptions based on their disability.

Did you know?

There is an increase of over 42% more students in higher education than in 2010.

Source: Higher Education Funding Council, 2016

Adjustments as tools for managing performance

Employees who are unable to meet their targets, goals or objectives because of a disability or long-term condition.

As a manager you are likely to encounter three types of employee:

- 1.** Employees who perform well and need no adjustments beyond those routinely available to everyone in your organisation, such as flexible working. These employees may or may not have a disability or long-term condition.
- 2.** Employees who do need adjustments possibly because of a disability or long-term condition. Once the barriers they face at work have been identified and adjustments implemented the person performs well.
- 3.** Employees who are not performing well even after adjustments have been identified and implemented and for whom you need to think about what (if anything) else may be reasonable.

The law requires employers to make reasonable adjustments to enable disabled employees who might otherwise not be able to work to get a job and/or stay in work. Adjustments should remove or reduce barriers faced by disabled people.

If these barriers are removed they should be on a 'level playing field' and be able to perform as well (or not) as any other employee. Their performance is no longer adversely affected by their disability and so they can be assessed on their skills, knowledge, abilities and commitment which will vary from person to person as they do in employees without a disability.

Performance management

In some cases it will not be possible to remove barriers completely or the nature of the disability may mean no adjustment will enable the person to perform to the same level as a person without that disability in that role. In these cases you will need to consider if it is reasonable in all the circumstances to reduce the disabled person's targets or performance expectations.

Reducing targets for disabled employees

Lower quality of work

It is not a reasonable adjustment to accept lower quality work. You should set quality standards and must make adjustments to enable everyone who works for you to achieve them.

Remember, the purpose of an adjustment is to enable disabled employees to meet the required standard, not lower expectations.

If an employee is not able to meet those standards because of a disability or long-term condition you should:

- Find out what the barriers are to achieving the standard required and make adjustments to remove or reduce them so the quality of work needed can be achieved.
- Provide any additional training or mentoring needed to improve performance in this area.
- If no adjustments will enable the employee to reach the standard required, work with the employee and your HR team to try to find a suitable alternative vacancy in your organisation to which the person can be transferred. This is legally a very different process from ordinary redeployment and will need to be carried out by your HR team. Business Disability Forum are able to offer them more detailed guidance if required.

Lower amount or quantity of work

Some disabled people will not be able to achieve their targets for output even after adjustments have been made for them.

This might be because:

- They work more slowly than other people because of their disability or long-term condition.
- They take longer to absorb and retain information because of their disability or long-term condition.
- They are easily tired and so need to take more breaks and so work more slowly.
- They take more time off sick because of a disability or long-term condition.

Marking an employee down in an appraisal if they have not met their targets because of a disability could be unfavourable treatment arising out of their disability and therefore discriminatory. As an employer you can legally justify such unfavourable treatment if you can show the treatment was necessary as a 'proportionate means of achieving a legitimate aim'.

This means you need to ask two questions:

1. What are the targets there to achieve – i.e., what is the legitimate aim?
2. Is reducing the target in this case a reasonable and proportionate means of achieving this overall aim? For example, a legitimate aim for targets set in a small business may be to increase sales and profitability in order to remain viable. Every employee's objectives may, therefore, need to contain sales targets in order to make a certain amount of profit. It may not, therefore, be reasonable for this business to reduce targets for a disabled employee and they may be justified because reducing targets is not a proportionate means of achieving their legitimate aim of staying in business.

Performance management

The legitimate aims of targets or objectives in larger organisations can be more complex. The aim may not only be to increase the organisation's profitability but also to further its values, principles and mission.

For example:

- Being a great place to work.
- Building and retaining trust.
- Contributing to and reflecting the communities in which it operates.
- Respecting people.

Think about how your organisation talks about its aims, mission, purpose or ambition to the rest of the world. Could reducing the target be a proportionate means of achieving these aims?

In order to further such aims your organisation may decide it will accept a lower output of work or change objectives for some disabled individuals. Lowering targets might be a proportionate means of enabling a disabled person who works to the best of their ability and makes a valuable contribution to your organisation's overall purpose to stay working with you. This in turn can show your organisation respects people and is a great place to work.

In addition, if you work in a public sector organisation you have a legal obligation to promote equality of opportunity for disabled people. Some private sector companies have corporate social responsibility agendas that include promoting the employment of disabled people. Your organisation might, therefore, whether public or private sector, choose to encourage disabled people to work there by accepting lower outputs from some disabled people once adjustments have been made.

Performance management

As a manager you need to be clear about your organisation's aims, values and mission and you must ensure these are understood by the people who work for you. They (and you) need to know how their objectives relate to the objectives and purpose of the organisation as a whole.

In practice, the decision as to whether to reduce an individual employee's targets is likely to be made in conjunction with your HR team, so you should check your own organisation's policy on this or contact Business Disability Forum's advice service in these complex and unusual cases.

Scenario two

Beth,

Retail
banking

Beth works in a call centre for a large retail bank.

All call centre workers have targets for the number of calls they must take and record accurately on the customer database.

The adaptive software Beth uses because of her visual impairment means she is slower than others at inputting data and so she is able to take fewer calls than her colleagues.

Beth's manager, Daniel, has noticed she is particularly good at dealing with customer complaints. He asks Beth about this and she agrees she likes the challenge of dealing with difficult customers because she finds she can often show them that she understands their grievance and then resolve their complaint which she finds rewarding.

However, dealing with complaints, which takes longer than other calls, and the extra time Beth needs to record the calls means she has failed to meet her targets.

Daniel agrees at her appraisal that in future her targets will be lower than those of her colleagues and in return they can refer customer complaints they cannot resolve quickly to Beth. Her colleagues are happy with this arrangement as they dislike dealing with customer complaints.

Contextual behaviours

Many organisations appraise employees not just on their skills, knowledge and abilities or 'task performance' but also on their behaviour or 'contextual performance'. While skills, knowledge and abilities are directly related to the person's job, contextual behaviours create the environment within which the tasks are performed and are often the same for everyone who works in the organisation.

They can include:

- Working as a team and succeeding together.
- Acting with integrity.
- Perseverance and dedication.
- 'Cheerful' enthusiasm.
- Promoting and defending organisational goals and policies at all times.

Contextual behaviours and disability

While managers understandably want to employ people who get on well with colleagues and are enthusiastic team members, some may not be able to display these behaviours because they have a disability such as autism, dyslexia or a mental health condition like depression.

If an employee's behaviour doesn't meet the organisation's standards, consider it possible they might have a disability or long-term condition. Talk to the employee about their behaviour, but remember the person may not be aware they have a disability or long-term condition. In some cases you will need to refer the person to an occupational health adviser who may contact a specialist for more information.

If someone cannot display the behaviour your organisation requires because of a disability (or long-term condition) it may, depending on the nature of the person's job, be an adjustment not to appraise their performance against that requirement.

Performance management

For example:

- Someone with autism who has difficulty with interpersonal communication and relationships may not be a good team worker. They may nevertheless be good at the tasks required in their job which may essentially be solitary and technical in nature.
- Someone managing depression might find it difficult to be enthusiastic and cheerful all or even some of the time but be able to perform the essential tasks of their job.
- Someone managing pain might find it difficult to be co-operative and a good team worker if this means volunteering for additional duties or working longer hours.

If an employee with a disability is marked down in a performance appraisal for failing to meet these behavioural requirements they may be able to claim disability discrimination if the reason arises from their disability or long-term condition. You must therefore make adjustments to behavioural requirements where it is reasonable to do so.

For more guidance on disability and workplace behaviours, see Business Disability Forum's 'Workplace Behaviours' Line manager guide.

Scenario three

Tom,
Software
engineering

Tom is a senior software engineer for a large company.

He has excellent technical skills but likes to work alone and frequently sits at his desk with head phones on to block out the noise of the office.

At his appraisal his manager, Tariq, says that while he would like to give him an excellent mark for his knowledge and technical skills he must mark him down because he has not met the organisation's values or behavioural requirements of working together to succeed together.

Tariq explains he has observed Tom does not contribute at meetings or volunteer to help his colleagues when they are struggling with their work or deadlines even though he has the skills to do so.

Tom is distressed by this assessment of his performance but accepts the 'needs some improvement' grading. A few weeks later Tom gives Tariq some information about autism. Tom tells Tariq it was suggested at university that he might have autism but as he was doing well in his studies this was never pursued. He would like an assessment now because his partner has suggested this may explain the way he works.

“

Tariq talks to the HR team and they agree to refer Tom for an assessment.

Tariq talks to the HR team and they agree to refer Tom for an assessment. The results confirm Tom does have Asperger's and so may need adjustments to help with working relationships. Tom and Tariq talk about the report together and Tom explains he doesn't intend to be unhelpful but does not always notice other people are struggling with work he finds relatively simple.

He needs to block out other people to be able to get on with his own work hence the head phones. He doesn't speak at meetings because he believes that if someone wanted to know his opinion they would ask.

Tariq agrees he needs to interpret the organisation's behavioural requirements differently to accommodate the way Tom works. Tariq will fulfil his own team working objectives by telling Tom when someone else on the team needs his help and Tom will then provide the help needed.

Tariq also decides everyone at meetings will be asked for their views and input. That way both Tariq and Tom will be fulfilling the organisation's requirements of working together in order to succeed together.

Calibration or forced distribution performance appraisal

Some, usually large, organisations use a forced distribution system or recalibrate performance appraisals. This means individuals are not just assessed against their own goals and objectives but against the performance of colleagues. The purpose of this approach is to continuously improve the performance of the team overall over an extended period, but in practice this can be viewed as unfair on individual members of the team and a negative influence on overall workplace culture, and the practice is becoming less common.

Systems vary and can be complex but essentially you may be asked to rank members of your team with a certain percentage – some as high performers, others in the middle and some as in need of improvement.

Other systems require managers to assess an employee against their own objectives first and to assign a ranking such as 'exceeds expectations'. The employee is then assessed against their colleagues' performance. If other people have performed better in relation to their objectives then you may have to revise your initial assessment and downgrade it from 'exceeds expectations' to 'meets expectations'.

Performance management

Organisations using such systems provide guidance for line managers but there are a few things to bear in mind when the performance of some members of your team may be affected by a disability or long-term condition:

- If there are any adjustments that can be made to remove barriers associated with a disability and improve the colleague's performance, this must be done before any formal performance review is carried out.
- If you are ranking people who work for you, check whether you have placed all the disabled people in the lower bands. This might be unconscious bias on your part. If disabled people who work differently with adjustments are as productive as other members of the team or meet their objectives they should not be ranked lower than similar non-disabled members of your team. More sophisticated forced distribution processes may do this already, checking against a number of different characteristics including gender, for example.
- If the reason disabled people are in the lower bands is because they don't display certain organisational behaviours (see above) check whether this is because of their disability. If it is, it may be a reasonable adjustment to discount the behavioural requirements and to reassess the person.
- If the reason is that the disabled people in your team are less productive than non-disabled colleagues but you have agreed to accept lower targets as a reasonable adjustment then this too should be discounted when assessing the person.

Grievance, disciplinary and capability proceedings



Grievances

Employees can raise a grievance with their employer if they have concerns, problems or complaints you haven't been able to resolve informally during your regular review meetings.

Grievances may be raised if the employee:

- Is unhappy with their performance appraisal.
- Believes they are being discriminated against.
- Believes they are being harassed or bullied.

The grievance may be directed against colleagues, their line manager or the organisation as a whole.

Disciplinary or capability proceedings

Some organisations may instigate disciplinary proceedings against an employee for poor performance. Others use disciplinary proceedings only for misconduct cases and instigate capability proceedings to try to improve performance. Make sure you check your own policies and processes before taking any action.

Circumstances in which you may decide to instigate disciplinary or capability proceedings can include:

- Failure to follow procedures, e.g. reporting sickness absences.
- Breach of policies, e.g. internet or email policies or drug and alcohol policies.
- Suspected illegal activity, e.g. theft or fraud.
- Allegations of harassment or bullying or other inappropriate workplace behaviour.
- Persistent failure to meet targets or objectives.
- Poor attendance.

Performance management

Your organisation should have policies for dealing with capability, disciplinary and grievance procedures including the basic principles that:

- Issues raised will be dealt with promptly. Meetings and decisions should not be delayed unreasonably.
- Investigations will be conducted to establish the facts.
- Employees will be given the opportunity to present their case fully before any decisions are made.
- Employees will be allowed to be accompanied at meetings.
- Employees will have the right to appeal against any decision.

Procedure

You must ensure grievance, disciplinary and capability procedures are accessible to disabled employees. This means documents must be available in alternative formats such as large print, Easy Read or electronically if necessary. If there is delay in producing these then time limits will need to be extended.

A disabled person might also need longer to prepare for the meeting, particularly if they have problems concentrating or if they are reading documentation in an alternative format or having it read out loud to them. It could be a reasonable adjustment in these circumstances too to extend the time periods to accommodate this, and you should ask the employee concerned whether they require any adjustments to the process when it is initiated.

Ensure that readers, advocates, sign language or other interpreters are available if they are needed. These are important meetings that can have a significant impact on an employee's career and so every step must be taken to ensure they understand what is being said and to present their own case.

Performance management

Many employers say employees can only be accompanied by a colleague or a trade union representative at meetings. However if a disabled employee needs to be accompanied by someone else as a reasonable adjustment, for example a support worker or a counsellor, this must be allowed.

This is not an exhaustive list of adjustments that might have to be made to the procedure. Talk to the employee about the procedure and explain what will happen and what they need to do. Then ask if any aspect of the procedure might place them at a disadvantage. If it does, you need to discuss ways in which disadvantage can be removed or minimised by making changes to procedure.

Investigation

During your investigations you may discover the employee's grievance, or the reasons for the disciplinary or capability proceedings, is related to the person's disability or long-term condition. In these cases you need to find out how the conduct or performance was affected by the disability.

For example:

- An employee with a learning disability may not have had procedures and policies explained to them and so may not have known they were not following them.
- An employee with a hearing or visual impairment or dyslexia may not have been able to access the policies or procedures because they are in inaccessible formats, e.g. DVDs without subtitles or policies in electronic format that don't work with adaptive software such as screen readers.
- An employee with a learning disability or autism might not have understood that their behaviour was inappropriate in the workplace or even illegal.

Performance management

- Behaviour and conduct issues that may be related to mental ill-health may need to be treated differently. Unacceptable behaviour should never be excused or ignored because of a disability, but you may need to make adjustments to enable the colleague to better manage their behaviour in future and this will need to be reflected in the outcomes of the investigation.
- An employee who has not had the adjustments they need, e.g. adaptive software to help them read documents, may not have been able to meet their targets.

It could be that neither you nor the employee is aware they have a disability or long-term condition when disciplinary, capability or grievance procedures are started. The possibility they might have a disability may emerge during the investigation. In these cases you should suspend the proceedings until you have obtained more information from appropriately qualified experts such as an occupational health adviser, for example.

If the reason for poor performance or misconduct is disability-related you will need to decide, together with your colleagues, whether you should continue with the proceedings or if they should be suspended in the light of this new information. If you – as the employer – could reasonably be expected to know about the employee's disability prior to the incident, it may be unlawful to continue with the process. You can take disciplinary or capability proceedings against a disabled employee if the reason for the proceedings are not related to the person's disability.

Performance management

If misconduct is related to the person's disability you will need to think about the circumstances and the severity of the conduct in question.

If this is the first instance of the behaviour then you may decide:

- No warnings are appropriate because the person did not understand the nature or effect of their behaviour.
- Some penalty is needed because of the nature of the conduct and the effect on other people; but rather than impose the penalty usually applied in such situations (for example, dismissal or a final written warning) a lesser action is appropriate (such as deciding to substitute a written warning for a final written warning, combined with an undertaking from the employee to apologise to colleagues).
- In exceptional cases you may have no option but to treat the situation as gross misconduct and to dismiss the employee. This might be because the employee has already been warned about their behaviour and steps have been taken to help them avoid behaving in such a way again, e.g. a workplace mentor or buddy to help someone understand what might be interpreted as unacceptable harassment, or anger management training for someone who loses their temper with colleagues.

Performance management

If targets or objectives have not been achieved because adjustments were not identified and/or implemented you should not continue disciplinary or capability proceedings, or uphold the employee's grievance if they raised one. You must take steps to implement the adjustments as quickly as possible. If there is a dispute about what adjustments may be reasonable, meetings perhaps with a mediator or external facilitator, may help. At such a meeting all the adjustments and the objections can be explored until agreement on what is reasonable is achieved and then the adjustments must be implemented.

Business Disability Forum offers a mediation service that specialises in cases involving disability and mental health, you can find details for our mediation services on our website businessdisabilityforum.org.uk/our-services/mediation-service/.

Scenario four

Zoe,

Supermarket
employee

Zoe works for a supermarket. Her duties include stacking shelves and handing baskets to customers.

Zoe was recruited through a local organisation working with people with learning disabilities. This organisation suggested she would benefit from a buddy at least initially to show her around the store and explain her duties. However, Zoe's manager, Adam found she picked up her duties quickly and interacted in a friendly and easygoing way with both colleagues and customers. He thought, therefore, she didn't need a buddy.

Two shift supervisors have now told Adam they or colleagues have seen Zoe taking and eating sweets from the pick 'n' mix selection in store. On one occasion Zoe was seen taking handfuls of sweets and putting them in her overall pockets as she headed to the canteen for her break. Adam knows eating food from the store that hasn't been paid for is gross misconduct that could lead to Zoe's dismissal.

Zoe is given a letter asking her to attend a meeting to discuss the allegations. She shows this letter to her support worker, Christine, who rings Adam to tell him Zoe does not understand the letter. Christine asks for the letter to be produced in Easy Read which uses simple language and pictures. Adam agrees to do this and to allow Christine to accompany Zoe to the meeting.

With an HR manager present at the meeting, Adam tells Zoe he has been told she has been taking and eating sweets from the pick 'n' mix. He asks her if this is true. Zoe agrees she has sometimes taken sweets. Adam asks her if she realises she is now in a great deal of trouble and might even lose her job. Zoe is bewildered and becomes upset.

The meeting is adjourned to allow Zoe to compose herself and to talk to Christine. Zoe tells Christine she didn't know she wasn't supposed to take the sweets. She thought they were there for everyone to help themselves. Christine tells Zoe she must say this to Adam.

When the meeting starts again Zoe tells Adam she is sorry for taking the sweets and she didn't know this was wrong. Christine suggests that if Zoe had had a buddy when she started work this situation may have been avoided.

Adam refers to the staff handbook which has policies that clearly state eating stock is both gross misconduct and theft for which criminal proceedings may be brought. Christine points out that Zoe hasn't had an Easy Read version of the handbook and no one explained the policy to her.

Adam and the HR manager decide it would be unfair to instigate disciplinary procedures against Zoe because she had not known about the policy and she had not understood what she was doing was wrong. She also had not realised the possible consequences of her actions.

They also decide Zoe should be given an Easy Read copy of the staff handbook and have it explained to her by a buddy. She must understand that if she eats food in the store again without paying for it she will be dismissed.

Employees who are off sick during grievance, disciplinary or capability proceedings

An employee who has raised a grievance or who is the subject of disciplinary or capability proceedings might find the proceedings so stressful they go off sick. This can be a difficult situation as the sickness absence may delay thorough investigations because you cannot talk to the employee or because they are not well enough to attend meetings.

As with any other employee on sick leave you should keep in contact with them. If the employee has a 'Tailored adjustment plan' you will know who should contact the employee and how, for example by telephone or email, because you will have agreed this in advance. You can find a template 'tailored adjustment plan' in **Appendix three**.

Your organisation is likely to have specific policies and processes to follow if the employee is signed off work for longer than two weeks, which may involve referral to your occupational health adviser. In cases where this is appropriate, ask the occupational health adviser if the employee might be able to return to work with adjustments and, if they are not, whether they are fit to attend a grievance or disciplinary hearing.

You should explain to the employee that even if they are not fit to return to work, it may help to continue with the proceedings as delaying them or having them 'hang over' them might be more stressful than the meeting itself.

Performance management

Explain to the occupational health adviser the nature of the meeting and adjustments that could be made to the process, for example:

- Providing transport to the workplace for the meeting.
- Holding the meeting in a different location such as another office or a neutral venue.
- Having the meeting by conference call so the employee does not have to meet you and your colleagues face-to-face. Allowing the employee to be accompanied. Most employers only allow employees to be accompanied by a colleague or trade union representative. It may, however, be reasonable to allow a disabled person to be accompanied by a counsellor, therapist or support worker. Employees sometimes ask if a family member, partner or friend can accompany them. This can be counterproductive if the person is too close to the employee to be objective and they might inhibit the employee from being open with you. Remember that an adjustment will only be 'reasonable' if it is effective – in this case, in helping you and the disabled employee achieve a fair and appropriate outcome to the process. Talk to the employee and think carefully about whether a family member or partner attending will actually help achieve this aim.

If none of the above work or are possible you might have to try to conduct the proceedings by letter. In this case you should explain to the employee you would like to meet them to talk about the issues. If the employee refuses to co-operate or is too ill to talk to you for a long period of time you may have to conduct the investigation in their absence.

It is essential they understand, however, that they are at risk of dismissal if they remain off sick indefinitely and are unable to talk to you to resolve the outstanding issues and return to work.

Scenario five

Colin,

Call centre
employee

Colin is employed in a centre working with young people. Earlier this year there was an incident in which a teenager was killed.

Since then Colin has become withdrawn and started taking one or two days off sick every month.

The centre's attendance management policy says any employee who cannot come into work for a shift must notify the centre before the shift is due to start. Colin has not done this and twice the centre had to call him to find out where he was only to be told he was feeling unwell and wouldn't be coming in. The centre manager, Ruth then had to find cover for Colin at short notice.

Colin did this again last month and was given a verbal warning for failing to follow absence reporting policies. Colin was upset at receiving the warning and went home. He has now been signed off sick with depression for three weeks and has lodged a grievance alleging Ruth, who is also his line manager, has been harassing him.

The centre's HR team asked Colin to come to a meeting to discuss his allegations but his wife has told them he is too ill to do this. The HR team told his wife they needed to speak to Colin and asked if it would be best to write to him or call him on the telephone. Colin's wife suggested email.

The HR manager emailed Colin explaining they would like to talk to him in order to further his grievance and suggested that if Colin didn't want to come into the centre the meeting could take place in a neutral venue such as a café. Colin agreed.

At the meeting Colin explained he was upset at the death of the teenager and felt Ruth had been unfeeling in her response. He had intended to come into work on the days for which he'd received the verbal warning but been unable to get going.

When Ruth had called him and asked if he was sick he had said 'yes'. He felt Ruth was now bullying him by giving him a verbal warning for this.

The HR manager then spoke to Ruth who explained she was upset by the death of the teenager but felt as the manager she should not show this. She would like to try to resolve the situation with Colin as they had got on well before this incident. The HR manager suggested the grievance procedure be suspended while Colin and Ruth talk.

At the meeting Ruth and Colin discuss how they have been feeling. Ruth explains that the policy of calling before a shift if an employee can't come in is needed because they work with children; the centre must find another adult to cover as they must have a certain ratio of adults to children.

She had not, however, appreciated how difficult Colin had been finding it to come into work. Colin tells her he had not realised the need to have a certain number of adults to work with children.

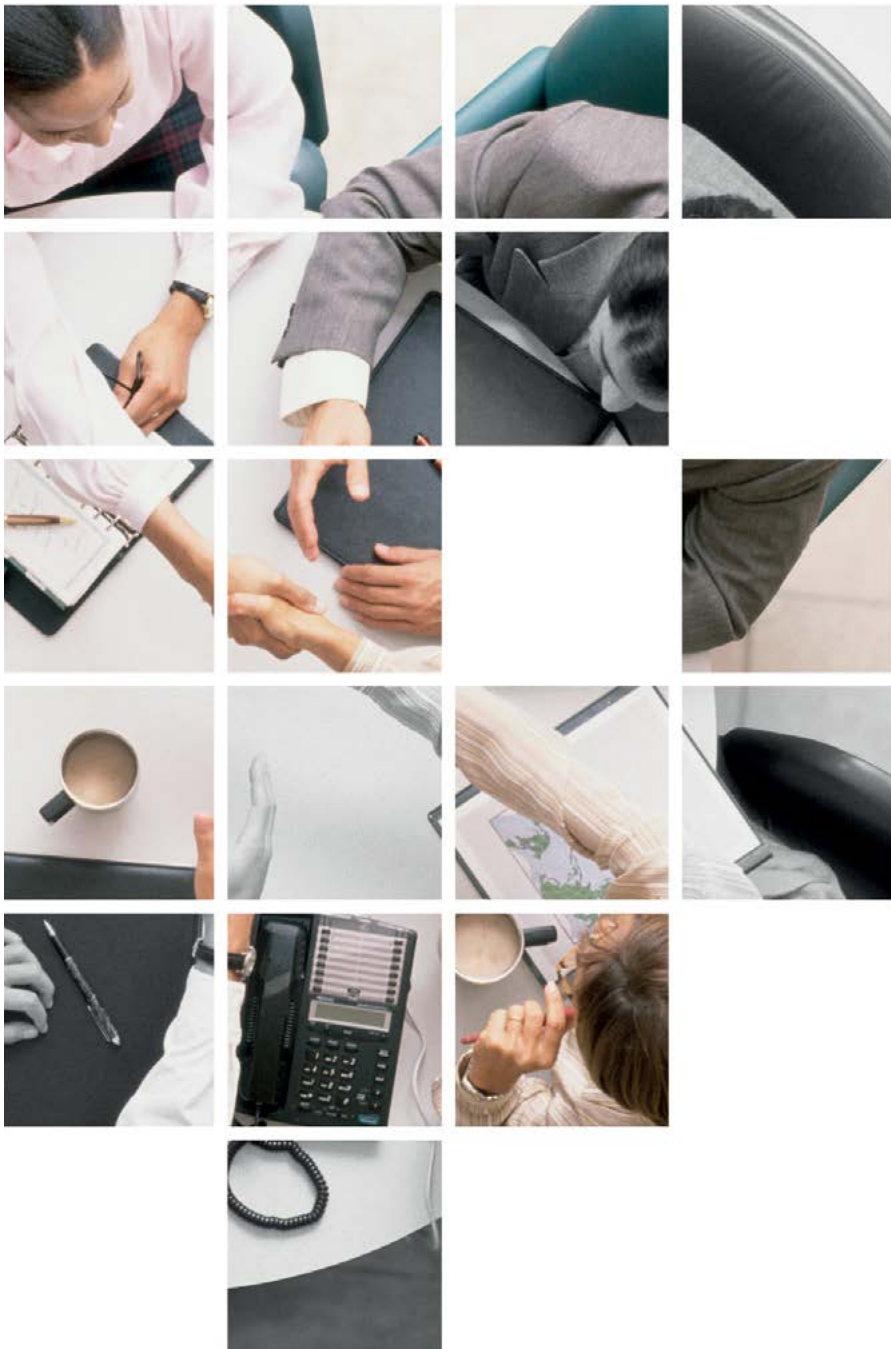
Ruth and Colin agree with the HR manager that Colin will withdraw his grievance if his verbal warning is withdrawn. In return Colin undertakes to follow the policy of letting Ruth know if he is not able to come into work. It is agreed Colin can do this by email or text if he feels unable to talk, but accepts that a further failure to follow this procedure could lead to disciplinary action. Colin also agrees to use the centre's Employee Assistance Scheme to talk to a counsellor.

Appendices

- Appendix one: Access to Work
- Appendix two: Recording disability-related absences
- Appendix three: What is a 'tailored adjustment'?
- Appendix four: Reasonable adjustments decision process and form

All the appendices can be downloaded by visiting:
<http://bit.ly/2rnyDT3>

About us



Business Disability Forum is a not-for-profit membership organisation, which helps build disability-smart organisations by making it easier for them to employ and do business with disabled people.

Our approach improves business performance and profitability through increased confidence, accessibility and productivity. We have more than 25 years' experience bringing together business people, disabled opinion leaders and government to facilitate the change for disabled people to be treated fairly and contribute equally to society and economic growth.

In representing almost 15% of the UK workforce, Business Disability Forum has contributed to the establishment and development of meaningful disability discrimination legislation in the UK. We provide pragmatic support to our Members and Partners by sharing our expertise and by providing training, in-depth consultancy and networking opportunities.

Our aim is to help organisations become fully accessible to disabled employees, customers and service users for mutual benefit.

If you are not already a Member or Partner of Business Disability Forum and would like to find out how to join please contact our team on telephone number **+44-(0)20-7403-3020**; or by email to **join@businessdisabilityforum.org.uk**

Performance management

For a full range of our products and services, which include:

Membership, the Disability Standard, Disability-smart awards, Advice service, Consultancy, Learning & development, Mediation service, Publications, Toolkits, e-guidance and Networking & events please visit **www.businessdisabilityforum.org.uk/our-services** or contact our team on: telephone number **+44-(0)20-7403-3020**; or by email to **enquiries@businessdisabilityforum.org.uk**

Business Disability Forum
Nutmeg House
60 Gainsford Street
London SE1 2NY

Tel: **+44-(0)20-7403-3020**
Fax: **+44-(0)20-7403-0404**

Email: **enquiries@businessdisabilityforum.org.uk**
Web: **www.businessdisabilityforum.org.uk**

© 2017 This publication and the information contained therein, are subject to copyright and remain the property of Business Disability Forum. They are for reference only and must not be reproduced, copied or distributed as a whole or in part without permission.

Business Disability Forum is committed to ensuring that all its products and services are as accessible as possible to everyone, including disabled people. If you wish to discuss anything with regard to accessibility, please contact us.

Company limited by guarantee with charitable objects. Registered Charity No: 1018463. Registered in England No: 2603700.



**Business Disability Forum
Partners include*:**

**Accenture
Allianz
American Express
Atos
Bank of America Merrill Lynch
Barclays (Founder leader)
BBC
BT
Cisco Systems
Deloitte
Department for Transport
Department for Work and Pensions
Enterprise Rent-A-Car
Environment Agency
EY
GlaxoSmithKline
HM Revenue & Customs
Home Office
House of Commons
HSBC
Impellam Group
Infosys Limited
Kingfisher plc
KPMG
Lloyds Banking Group
MAXIMUS UK
Microlink PC
Microsoft Ltd
Ministry of Defence
National Crime Agency
Nationwide Building Society
NHS Scotland
PricewaterhouseCoopers
Royal Bank of Scotland Group
Royal Mail Group
Sainsbury's
Santander
Shell International Ltd
Sky UK Limited
Standard Chartered Bank**

***correct at the time of publication,
visit our website for the current list.**

Contact us

**Business Disability Forum
Nutmeg House
60 Gainsford Street
London
SE1 2NY**

Tel: +44-(0)20-7403-3020

Fax: +44-(0)20-7403-0404

Email: enquiries@businessdisabilityforum.org.uk

Web: businessdisabilityforum.org.uk