

Mental health and the healthcare sector

Mental health issues are as prevalent in healthcare as any other industry. In this article, Adam Bernstein discusses the challenges that mental health issues can pose to employers, and their duty to make reasonable adjustments to accommodate them

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Mental health is a regular topic in the news as more and more people uncover conditions that affect their day-to-day lives, and these conditions have the potential to significantly impact their ability to perform at work. For these employees, reasonable adjustments made by employers can help them fully participate in the workplace.

Mental health in the care setting

Mental health issues are just as prevalent in healthcare as any other industry.

Back in April 2020, the Local Government Association published its own 13-page guide, *Health & Wellbeing Information for Care Staff* (Health & Wellbeing Information for Care Staff, 2020). Coming out at the start of the COVID-19 pandemic, the guide advised on areas such as emotion management, symptoms of stress, managing feelings, dealing with bereavement and the need to talk. A 'simple' document, it made clear that it's 'ok to not be ok'.

More recently, in October 2022, the CQC published the 2020-21 edition of *State of Care* (Care Quality Commission 2022 Oct 21). It detailed the impact of the pandemic on mental health. In particular,

it wrote that 'in June 2021, a report by the Samaritans identified healthcare workers as one of five groups whose suicide risk may be exacerbated as a result of the pandemic', and that a June 2021 'report from the House of Commons Health and Social Care Committee concluded that burnout is a widespread reality in today's NHS.'

An Acas guide

It's not always clear what's expected of employers when it comes to supporting employees with mental health conditions. To provide greater clarity and direction, Acas recently published new guidance - *Reasonable adjustments for mental health* - which aims to help employers and employees handle requests for reasonable adjustments that relate to mental health (Reasonable adjustments for mental health, 2023).

The guidance covers everything from what reasonable adjustments are to examples of adjustments that might be made for mental health, as well as how requests for reasonable adjustments should be made and responded to. It also suggests that employers review their current policies with mental health in mind.

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For Alexandra Farmer, Head of Team and a solicitor at Worknest, given the prevalence of mental health conditions, 'such guidance is long overdue.' She cites a government survey of mental health conducted in 2014 where one in six people aged 16 and above had experienced symptoms of a common mental health problem, such as depression or anxiety in the week before the survey (Baker and Kirk-Wade, 2023).

Attention can be drawn to an April 2022 survey from Deloitte, *Mental health and employers* (Parsons, 2022). It found an



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increase of 25% in the cost of poor mental health to employers compared to 2019 and that 28% of employees either left in 2021 or were planning to leave their jobs in 2022, with 61% citing poor mental health as the reason they are leaving.

It also noted that mental health issues were a strong driver for the 'great resignation': 'long hours, increased stress and job insecurity have had a detrimental impact on quality of life during the pandemic. People are leaving their jobs, re-evaluating their careers and changing occupations in large numbers.'

Just as importantly, the report surmised that the cost to employers due to poor mental health increased to around £56bn in 2020-21 compared to £45bn in 2019.

As a result, it is logical to look at why formal guidance is needed, and when the duty to make reasonable adjustments arises, what sort of adjustments might be made for employees with mental health conditions, and the steps employers can take.

Challenges for employers

From experience, Farmer knows that making reasonable adjustments for mental health conditions is more challenging than those for physical health conditions. She notes that 'the invisible nature of mental health can make it difficult for employers to identify and understand the extent of the employee's condition and the adjustments needed. This is often compounded by a lack of awareness and understanding surrounding mental health – and the stigma that still exists.' It doesn't help that

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employers and colleagues may not fully comprehend mental health conditions, the impact they can have on work, or the accommodations required. 'This lack of awareness and understanding' says Farmer, 'can hinder the process of making appropriate adjustments.'

Additionally, the fact that those with mental health conditions experience varying symptoms and needs, means that there is no 'one size fits all' solution. Unlike physical health conditions that may have more standardised accommodations, mental health conditions require personalised adjustments tailored to the individual. Farmer has seen this complexity pose challenges in identifying and implementing the most effective adjustments.

On top of this are employees' fear of discrimination, stigma, or negative consequences, which Farmer says, 'can make them reluctant to disclose their mental health conditions along with a lack of resources and expertise.'

Despite these challenges, she considers it 'crucial for employers to invest in education,

create supportive policies, foster an open and inclusive culture, and provide resources to effectively make reasonable adjustments for mental health conditions.' The guide from Acas should help.

The duty to make reasonable adjustments

In law, if an employee's mental health condition amounts to a disability, employers have a duty to make reasonable adjustments.

On this Farmer says that 'under the Equality Act 2010, a person is considered to be 'disabled' if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.' She adds that 'not every employee with a mental health condition will be considered disabled; this will be case specific.'

Notably, the duty to make reasonable adjustments arises when an employer becomes aware, or should reasonably be aware, that an employee is placed at a



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substantial disadvantage because of their disability compared with non-disabled employees. They may be disadvantaged

by an employer's provision, criterion or practice, a physical feature of the employer's premises or an employer's failure to provide an auxiliary aid.

For the duty to arise, the employee, as Farmer explains, "must be placed at a substantial disadvantage. Substantial, is defined as 'more than minor or trivial' so this is a fairly low bar in reality. The duty to make reasonable adjustments will not be triggered if the employer does not know, and could not reasonably be expected to know, that the individual is disabled and that they are likely to be placed at the disadvantage. However, it's important that employers have procedures in place to find out such relevant information."

As to examples of reasonable adjustments for mental health, Farmer begins by making a number of points clear – that assessing the impact of mental health conditions and determining appropriate adjustments can be more subjective compared to physical health conditions; that mental health conditions can manifest differently in each individual, and their impact on work performance may vary; and subjectivity can make it harder for employers to objectively

evaluate the adjustments needed and ensure consistency in their approach. However, common examples of reasonable adjustments include:

- ▶ *Changes to absence reporting procedures. Employees may feel unable to speak to someone to report their absence and so organisations should allow employees to email or text, or allow family members or a friend to contact the organisation on their behalf.*
- ▶ *Adjustments to absence management procedures such as increasing trigger points for formal action.*
- ▶ *Allowing an employee to work from home on a temporary or more regular basis.*
- ▶ *Allowing more regular breaks away from workstations.*

Farmer summarises: 'Acas in its guidance reminds employers to remember that every job is different, so what works in one situation might not work in another; every employee is different, so what works for one employee might not work for another; and mental health fluctuates over time, so what works for an employee now might not work in the future.'

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Steps employers can take now

It makes sense that employers should proactively address mental wellbeing in the workplace, regardless of whether an employee has a diagnosed mental health condition or not. And a big part of this, as the Acas guidance recommends – and Farmer highlights – “is reviewing your policies with mental health in mind. Does your absence policy, for example, use ‘trigger points’ that put employees with recognised and ongoing mental health problems at a disadvantage? Do your policies allow managers to take a person-by-person approach? Are they easy for employees to find, understood by managers, and implemented consistently?”

In her view, a stress and mental wellbeing policy demonstrates ‘commitment to the wellbeing of employees and creates a supportive culture where staff feel comfortable discussing mental health concerns and seeking assistance when needed.’ She also thinks it advisable to have a section in policies, often within an absence policy, that specifically refers to reasonable adjustments and ‘urges employees who feel that they may require an adjustment to discuss their situation with their line manager or HR.’

Lastly, policies will only be effective if

understood and implemented. This means that as well as revising policies, managers and employees need training and support to implement them effectively.

Summary

Fostering a workplace culture that promotes overall wellbeing can play a pivotal role in raising awareness and can help to break down the stigma that is still often associated with mental health, which can result in employees not seeking the support they need.

As Farmer reminds, reasonable adjustments benefit both employers and employees: ‘By providing employees with the necessary support to stay in work and excel, employers can increase productivity and performance, keep costs down, and minimise the disruption caused by absenteeism. As such, they are not only a legal obligation, but a smart strategic investment.’ [◀ JAN](#)

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