

When Adjustments Aren't Enough

Managing Capability where Neurodivergence is a Factor

17 June 2026

What is Neurodivergence?

Beyond the Label: Understanding Neurodivergence



Autism | ADHD | Dyslexia |
DCD/Dyspraxia | Dyscalculia |
Tourette's



Unique nervous systems — not
deficits, differences



Presentation varies within
conditions and over time

The Legal Framework

Equality Act 2010: When Does Neurodivergence Become Disability?

Mental impairment
+ substantial
+ long-term
+ affects normal
day-to-day
activities

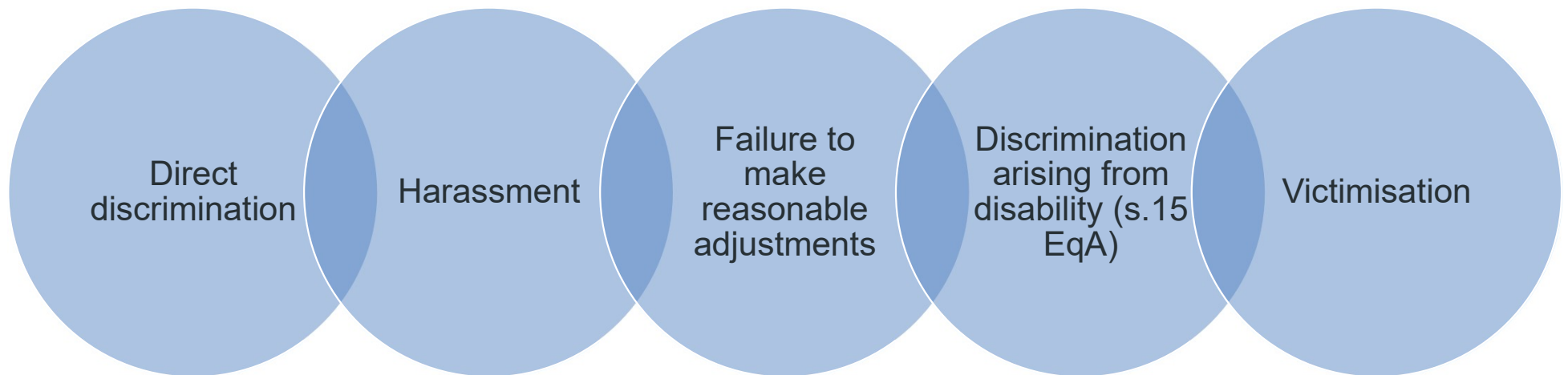
"Substantial" =
more than minor
or trivial

Medication/coping
strategies
disregarded

Secondary
conditions
(anxiety,
depression) can
count
independently

Risk Snapshot: Protections That Apply

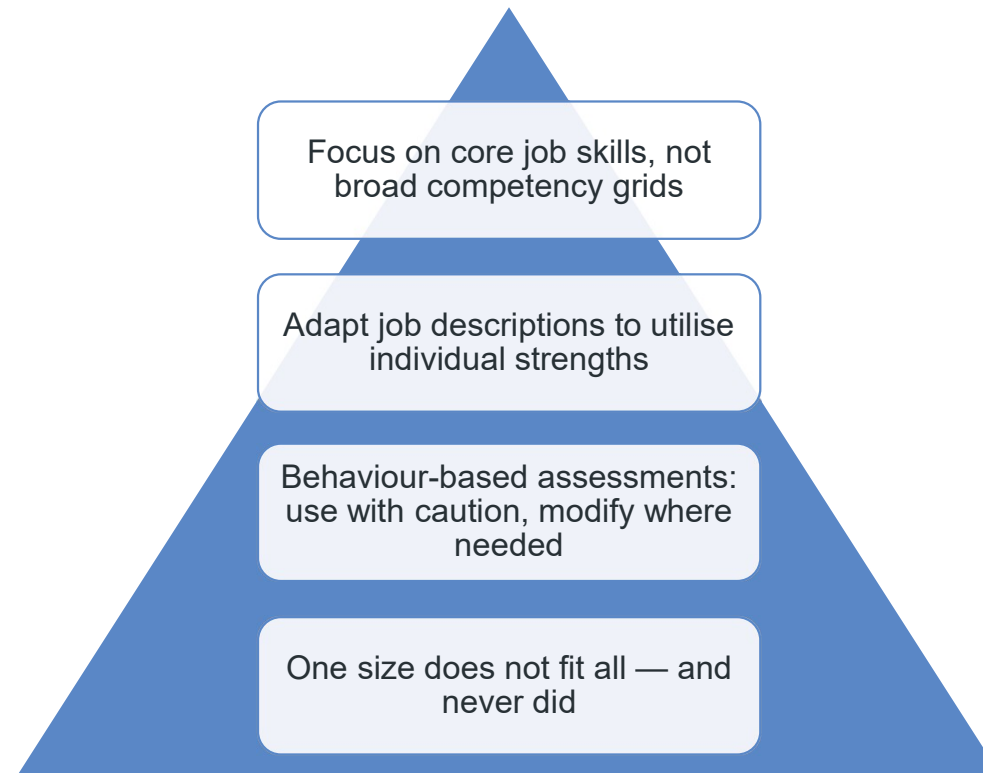
Five Risks You Cannot Afford to Ignore



No formal diagnosis needed to trigger protection

Rethink the Framework

Strengths-Based > Rigid Competency Frameworks



Exhaust Support Before Formal Process

Have You Really Done Everything You Can?

- Wasted time & effort
- Financial cost to the business
- Employment tribunal claim
- Damage to employee wellbeing

Case example: Sam's story



Lessons from the Tribunals (Pre-Process)

Three Cases, Three Missed Adjustments

Employee	Condition	Missed Adjustment
Khorram v Capgemini	ADHD	Achievable tasks; ND awareness training
Dubarry v Sainsbury's	Learning disability / ASC	Mentor; regular behavioural reinforcement
Moore v Greene King	Dyslexia	Auxiliary aid (Bluetooth earpiece)

Proceeding Formally: What Good Looks Like

- When Formal Process Is Necessary — Running It Well
- Reasonable adjustments within the process — not just before it
- Dyslexic employee: talk through written correspondence
- Autistic employee: clear, structured meeting records
- Dyspraxic employee: extra training time on systems
- Late disclosure? Still engage. Still adjust.

ACAS: offer support even if neurodivergence is shared mid-process



Toghill v Lidl: The Hearing That Went Wrong

Five Lessons from One Failure



Seek specialist advice
before the hearing, not
after



Build in breaks for
reflection



ADHD symptoms \neq
dishonesty or evasiveness



A fair outcome can still be
an unfair process



Even where dismissal
may be justified, a flawed
process can cause
discrimination risk

The Hidden Employee: Undisclosed Neurodivergence

What you know and what you should have known

- "Masking" — learned behaviours that conceal neurodivergence
- Constructive knowledge: you cannot simply plead ignorance
- Stress can make masking harder — neurodivergence may surface during the process
- Never frame masking as deliberate deception (Morgan v Buckinghamshire)

EHRC Code: employers must do all they can reasonably be expected to do to find out



Trowers Top Tips

Good management is your legal defence

- Assume disability may apply
- Adjust before, during and throughout the process
- Tailor your capability procedure and performance standards
- Document every step: adjustments made, reviewed and reconsidered
- Train managers: awareness supports disclosure, disclosure enables support

Questions?

Over to you

