

## White Paper Conference

Dismissal: Shaping New Developments into Solution-Focused Answers for Employers

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**What is “reasonable” when it comes to (1) an employee’s struggle with executive function and maintaining consistent productivity and (2) behaviours or mannerisms that may be upsetting to colleagues?**

*"Steep rise in employment tribunal claims over neurodiversity discrimination"*

*"Neurodiversity forum launched to support employees"*

*"Neurodiversity and the problem with labels"*

*"2021 – The Year That The Neurodiversity Movement Came Of Age"*

*"Neurodiversity ignored by seven in 10 employers"*

## Neurodiversity at work

What is neurodiversity?

- Neurodiversity refers to a difference in brain processing that can affect social interaction, learning, attention, sensory processing, and other aspects of interacting with the world and other people
- It has become a collective term for conditions such as Autism Spectrum Disorder (ASD), ADHD, dyslexia, dyscalculia and dyspraxia
- It is estimated that around 15%-20% of the population are neurodivergent
- Consider possible application of disability discrimination
  - Most forms of neurodivergence are experienced along a 'spectrum' so will not apply to everyone or may or may not amount to a disability
  - individuals may have the characteristics of more than one type of neurodivergence – so may be cumulative effect

## Neurodiversity at work

Acas guidance



Employers can ask themselves these key questions to check if their workplace is set up to support neurodiversity:

- Can I do more to make sure my workplace understands neurodiversity?
- Do my managers have the skills to manage neurodiverse staff?
- Can I reduce distractions in my workplace?
- What internal assistance and support can I provide for my neurodivergent employees?
- Could I offer diagnostic and workplace needs assessments?
- How do I design job roles that get the best out of my staff?
- Is my recruitment process inclusive?
- Am I encouraging neurodivergent talent in my organisation?
- Do I know where to go for further information and support?

## Neurodiversity at work

### Buckland Review

## Buckland Review of Autism Employment: Report and Recommendations

- Made 19 recommendations falling into the following categories:
  - Initiatives to raise awareness, reduce stigma and capitalise on productivity
  - Supporting autistic people to begin or return to a career
  - Recruitment practices that appropriately support autistic applicants
  - Supporting autistic people already in the workforce
  - Encouraging and supporting career progression
- CIPD – Neuroinclusion at work report 2024

# Cases

## Case law

### Learnings

#### Morgan v Buckingham Council

- M was a social worker in the fostering team. Had autism and dyslexia.
- Council code of conduct outlined the gifts that could be given to children.
- M dismissed for giving gifts to a child she was responsible for without authority of her line manager.
- Appealed but appeal dismissed and appeal manager stated it was a matter of concern that M had chosen to withhold her autism by “masking” throughout much of her employment, potentially putting vulnerable children at risk.
- M made Tribunal claim alleging unfair dismissal, discrimination arising from disability and harassment for the comment made by the appeal manager.

#### **Was she successful in her claim?**

## Case law

### Learnings

#### Morgan v Buckingham Council

- ET found she had not been unfairly dismissed;
- Not been subjected to harassment arising from her disability because the council had justified her dismissal; but
- M had been subjected to harassment.

M appealed to the EAT and the council cross-appealed.

- EAT upheld the decision on appeal.

## Case law

### Learnings

#### McQueen v General Optical Council

- M worked for General Optical Council.
- Had dyslexia, symptoms of Asperger's and left sided hearing loss.
- GOC knew of conditions and accepted he was disabled for the purposes of the Equality Act.
- In situations of stress, anxiety or conflict M had a tendency to raise his voice and adopt mannerisms suggestive of aggression, with inappropriate speech and tone.
- Problems arose in relation to M's performance and conduct. In April 2015 he was told to prioritise certain work by his line manager. M responded by becoming rude and disrespectful, used aggressive gestures and inappropriate body language. In 2016 had a second "meltdown" when asked to clear a backlog of claims reducing the manager to tears.
- M became angry towards colleagues over various issues including a disagreement over his job description, his failure to follow instructions, his low appraisal rating and giving incorrect advice to a client.
- M disciplined on more than one occasion and given verbal warning about his tendency to stand up at his desk and speak loudly to colleagues
- M brought a claim for discrimination arising from disability alleging that his aggressive and disruptive behaviour arose out of his disabilities.

#### **Was he successful in his claim?**

## Case law

Learnings

McQueen v General Optical Council

**No**

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