

White Paper Conference on Dismissal

Neurodiversity

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The Question

What are your options where neurodivergence is strongly suspected as a reason for poor performance or behaviour, but the employee seems unaware or refuses to seek a diagnosis?



Background

What do we mean by “neurodiversity”?

- Neurodivergence – *having a mind that functions in ways which diverge significantly from the dominant societal standards of “normal”*
- Umbrella term covering a range of neurological differences, including:
 - autism
 - dyspraxia
 - dyslexia
 - ADHD or ADD
- ACAS Guide: *Neurodiversity at work March 2025*
<https://www.acas.org.uk/neurodiversity-at-work>
- Labour’s *Plan to Make Work Pay* – pledge to raise awareness of neurodiversity in workplace and wider society

Neurodiversity at work

- CIPD estimates that 1 in 5 people identify as neurodivergent in some way
- Increase in number of diagnoses (autism diagnoses increased by 787% between 1998 and 2018)
- Workplaces designed for “neurotypical” employees create difficulties for neurodivergent employees, e.g.
 - interview arrangements on recruitment/promotion
 - hot desking
- Increase in litigation – e.g. ET judgments referring to “dyslexia” increased from 0 in 2015 to 111 in 2023

Legal Risks

Neurodiversity and disability discrimination

— Equality Act 2010 definition:

A person has a disability if they have a mental or physical impairment and the impairment has a substantial and long-term adverse effect on their ability to carry out normal day to day activities

— Potential claims:

- direct discrimination
- indirect discrimination
- discrimination arising from disability
- failure to make reasonable adjustments
- harassment
- victimisation

Possible reasonable adjustments for neurodivergent employees

- Equipment (e.g. noise cancelling headphones)
- Specialist software
- Proofreading support
- Working environment (e.g. designated desks, quiet workspaces)
- Working from home
- Working schedules
- Regular breaks
- Feedback/check-ins/mentoring
- Providing meeting notes

CIPD – seven key principles for creating a neuroinclusive organisation

- Understand where you are now and commit to a long-term plan of action
- Focus on creating an open and supportive culture where people feel comfortable talking about neurodiversity
- Proactively consider neurodiversity in all people management interactions
- Allow individuals to be masters of their own journey
- Embrace flexible working to enable everybody to thrive
- Practice ongoing attention to wellbeing
- Empower neurodivergent voices

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?

Question

Question

What are your options where neurodivergence is strongly suspected as a reason for poor performance or behaviour, but the employee seems unaware or refuses to seek a diagnosis?

- Should you ask the employee directly about what you suspect?
- Should you insist on an Occupational Health referral ?
- Would you consider offering a settlement to leave?

Question: possible ways of addressing the issue

- Need to deal with your concerns in a sensitive manner
- Don't talk directly about your suspicions. Instead talk to the employee about what you have observed, frame the conversation in a positive manner in terms of support and reasonable adjustments as opposed to immediately referring to performance management.
- Consider the language you use, ensuring use of appropriate terminology and avoiding terms like "suffering from" or "symptoms" which is suggestive of an illness which being neurodivergent is not.
- Before moving to any formal procedures relating to conduct, capability or performance make sure you have done all you can to support the employee
- Adjust performance management procedures to take into account an employee's condition
- Set clear objectives through the performance management process and follow up regularly orally and in writing
- Gain trust and aim to be a neurodivergent inclusive employer by reviewing your policies and processes, providing training and supporting managers, raising awareness of neurodiversity, consider support for all employees, so neurodivergent employees can get support without having to share their neurodivergence and having a neurodiversity policy
- Confidentiality is key
- If adjustments do not work, then it may be appropriate to implement formal procedures



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