# Reasonable Accommodation under the Framework: Are there lessons from the experience of reasonable adjustments under the Disability Discrimination Act I995?

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## Understanding the duty to accommodate in relation to equal treatment

"The purpose of the duty to accommodate is *not* to provide 'special measures' to people with disabilities, but instead to remove barriers to their participation where it is equitable to do so. Rather than aiming to achieve identical results for disabled people - as compared to non-disabled people - it simply aims to ensure that people with disabilities are afforded an *equal opportunity* to achieve those results. It should be stressed in this regard that the making of accommodations is not a new social concept; that the provision of artificial lighting, restrooms, seating and escalators (to name but a few examples) are all accommodations that are regularly made to facilitate the comfort and efficiency of employees and service recipients. The duty to accommodate requires no more than the provision of accommodations (mostly through modifications to existing facilities) to cater for the needs of people with disabilities. … It is simply a necessary device for *achieving* equality (rather than seeking to deviate from it) and should not, therefore, be confused with disability welfare or affirmative action measures that have such deviation (albeit positive in nature) as their purpose."[1]

## 1. Disability Discrimination Act duty to provide reasonable adjustments

The Disability Discrimination Act (DDA) came into force on 2nd December 1996. It protects disabled people from discrimination in employment.

One way in which discrimination occurs is when:

- for a reason which relates to a disabled person's disability, the employer treats that disabled person less favourably than the

[1] Whittle R, "*The Framework Directive for equal treatment in employment and occupation: an analysis from a disability rights perspective"*

employer treats or would treat others to whom the reason does not or would not apply; and

- the employer cannot show that this treatment is justified (S5(1)).

The other way the Act says that discrimination occurs is when:

- an employer fails to comply with a duty of reasonable adjustment imposed on him by section 6 in relation to the disabled person; and

- he cannot show that this failure is justified (S5(2)).

The Act says that less favourable treatment of a disabled person will be justified only if the reason for it is both material to the circumstances of the particular case and substantial (S5(3)). 'Substantial' has been interpreted in the statutory Code of Practice and in caselaw to mean 'something more than minor or trivial.'

The duty contained in s.6 of the Act arises where the "arrangements" of an employer or the physical features of an employer's premises place the disabled person at a "substantial" disadvantage.

If the employer does not know, and could not reasonably be expected to know, that a disabled person is an applicant for a job, or that a person has (or has had) a disability and is likely to be placed at a substantial disadvantage, then the duty does not arise – s.6(6).

**What is reasonable?**

Section 6(4) states that, in determining whether it is reasonable for an employer to have to take a particular step in order to comply with the duty to make adjustments, regard shall be had, in particular, to certain matters. These include the extent to which taking the step would prevent the disadvantageous effect in question and the extent to which it is practicable for the employer to take the step; the financial and other costs which would be incurred by the employer in taking the step; the extent to which taking the step would disrupt any of the employer's activities; the employers resources; the availability of assistance. This list of factors is not exhaustive.

## Employer dependant on others

Section 16 DDA in relation to alterations to premises occupied under leases:

(1) This section applies where-
   a) An employer or trade organisation ('the occupier') occupies premises under a leas;
   b) But for this section, the occupier would not be entitled to make a particular alteration to premises; and
   c) The alteration is one which the occupier proposes to make in order to comply with a section 6 duty or section 15 duty.

(2) Except to the extent to which it expressly so provides, the lease shall have effect by virtue of this subsection as if it provided-
   a) For the occupier to be entitled to make the alteration with the written consent of the lessor;
   b) For the occupier to have to make a written application to the lessor for consent if he wishes to make the alteration;
   c) If such an application is made, for the lessor not to withhold his consent unreasonably; and
   d) For the lessor to be entitled to make his consent subject to reasonable conditions.

## 2. How does this compare to reasonable accommodation under the Framework Directive?

Under Article 5 of the Framework directive, a duty is placed on employers to provide reasonable accommodations "…*where needed in a particular case*, to enable a person with a disability to have access to, participate in, or advance in employment, or to undergo training, *unless* such measures would impose a *disproportionate burden* on the employer."

## Scope

Whilst the protection under the Framework directive will in some instances extend beyond the employment relationship itself, the duty to accommodate under Article 5 applies to employers only. It will not, therefore, apply to the other individuals and organisations falling within the Framework directive's sphere of operation, such as training

providers (unless it is the employer providing the training, organisations of workers and employers, and professional bodies. It will apply where needed to have access to, participate in, or advance in employment, or to undergo training.

The DDA duty's scope is broader in that the adjustment duty applies to trade associations, and also to the full range of employment benefits, terms and opportunities.

It is not clear whether the requirement to provide an accommodation where needed is broader or narrower than the DDA's requirement to provide an adjustment where a disabled person is placed at a "substantial disadvantage".

**Knowledge**

The use of the words "where needed in a particular case" in Article 5, suggests that the duty will only arise where the employer has knowledge of the individual's disability. Whether such knowledge may be constructively attributed to the employer is, at present, unclear. The requirement of knowledge – and crucially a requirement that employers take active steps to inquire about the need for adjustments – is explicit in the DDA.

The statutory *Code of Practice for the elimination of discrimination in the field of employment against disabled persons* ('Code of Practice') states: "The Act says that an employer is not under an obligation to make an adjustment if he does not know, and could not reasonably be expected to know, that a person has a disability which is likely to place the person at a substantial disadvantage (S6(6)). An employer must therefore do all he could reasonably be expected to do to find out whether this is the case." It gives the following example:

"An employer has an annual appraisal system which specifically provides an opportunity to notify the employer in confidence if any employees are disabled and are put at a substantial disadvantage by the work arrangements or premises. This practice enables the employer to show that he could not reasonably be expected to know that an employee was put at such a disadvantage as a result of disability, if this was not obvious and was not brought to the employer's attention through the appraisal system."

There does appear to be some onus on the applicant or employee to make known to the employer their need for a reasonable adjustment. In *Ridout v TC Group [1998] IRLR 628* the EAT indicated that disabled people should not have a duty imposed upon them to give to an employer a detailed account of their disability and its effects upon them, especially where this would only lead to an employer making adjustments which it would have been reasonable to make I n any event. But it is equally undesirable to expect employers to ask intrusive questions of disabled people which would not have been asked of a non-disabled person. A tribunal has to measure the extent of the duty to make a reasonable adjustment, if any, against the actual or assumed knowledge of the employer both as to the disability and its likelihood of causing the individual a substantial disadvantage in comparison with persons who are not disabled.

**Reasonable/undue hardship**

The approaches of the DDA and Directive on this issue seem very similar.
Recital 21 to the Framework directive provides that "account should be taken *in particular* of the financial and other costs entailed, the scale and financial resources of the organisation or undertaking and the possibility of obtaining public funding or any other assistance." The DDA mentions these factors, but also practicability and the extent of disruption. However, in neither case are the factors listed as exclusive.

Under the Directive the accommodation need only be 'reasonable' in nature and need not be the 'best' possible accommodation (Recital 20 to the Framework directive defines 'appropriate measures' under Article 5 as "effective and practical measures".)

The Code of Practice states:
"If either of two possible adjustments would remove a disadvantage, but the employer has cost or operational reasons for preferring one rather than the other, it is unlikely to be reasonable for him to have to make the one that is not preferred. If, however, the employee refuses to cooperate with the proposed adjustment the employer is likely to be justified in not providing it.

If an employee become disabled, or has a disability which worsens so she cannot work in the same place or under the same arrangements and there is no reasonable adjustment which would enable the employee to continue doing the current job, then she might have to be

considered for any suitable alternative posts which are available. (Such a case might also involve reasonable retraining.)"

**Justification for failure to reasonably adjust**

The one significant adjustment to the s6 duty which the UK Government proposes to make is the removal of the ability of an employer to 'justify' a failure to make a reasonable adjustment (s.5.2).

Article 2(5) of the Framework directive provides that the principle of equal treatment and the protection afforded by the directive is "…*without prejudice* to measures laid down by national law which, in a democratic society, are necessary for public security, for the maintenance of public order and the prevention of criminal offences, for the *protection of health* and for the *protection of the rights and freedoms of others*" (Emphasis added).

This will restrict the application of the reasonable accommodation duty where an individual would pose a health and safety risk either to themselves or to their work colleagues. It is crucial that any assessment is conducted in a rational and objective way and is not based on fear, ignorance and prejudice. The British experience in relation to this issue is analysed in Davies, J. and W. Davies (2000). "Reconciling Risk and the Employment of Disabled Persons in a Reformed Welfare State." Industrial Law Journal 29: 347-377.

Article 7 of the Framework directive also makes mention of the issue of health and safety, this time in the context of positive action. This provision recognises that equal treatment may not (in itself) be enough to achieve 'real' equality in practice and allows Member States to maintain or adopt "specific measures to prevent or compensate for disadvantages linked to any of the [protected grounds]." In particular, it refers to the maintenance or adoption of "…provisions on the *protection of health and safety at work* or to measures aimed at creating or maintaining *provisions or facilities for safeguarding or promoting [the integration of disabled persons]* into the working environment." (Emphasis added). The reason for the inclusion of the reference to 'health and safety' is unclear. Whittle comments: "Presumably, it is intended to allow *and encourage* Member States to adapt their health and safety legislation to take into account the needs of people with disabilities." But he also cautions against the possibility of this provision being relied on for the adoption of "measures ostensibly designed to guarantee the health and safety of workers with

a disability [but which] could in fact result in the exclusion and denial of equal treatment to people with disabilities". [2]

## 3. Operation of reasonable adjustment duty

Research into the operation of the DDA[3] provides an invaluable analysis of the types of issues raised under the reasonable adjustment duty.The statistical analysis of claims brought under Part II DDA is based on all known tribunal cases issued and/or decided in the United Kingdom from 2nd December 1996 until 1st September 2000 inclusive – a total of 8,908 cases.

Of those cases, 6,183 had reached a conclusion by 1st September 2000 and 2,725 were ongoing.

- 50.1 per cent of concluded DDA cases resulted in a settlement, 30.4 per cent were withdrawn and 19.5 per cent were disposed of by a tribunal.

- Overall, the success rate for applicants in cases that were disposed of at a tribunal hearing was 19.5 per cent. (compare this to 16% of race discrimination cases win at tribunal).

- 32.7 per cent of cases involved claims for reasonable adjustment.

- Claims with the highest success rates concerned reasonable adjustments (with a success rate of 25.7 per cent).
- The most common reason for rejecting a claim, cited in 26 per cent of all unsuccessful cases, was that the applicant was not disabled. Other common reasons given by tribunals for rejecting claims were that the applicant had not been treated less favourably (16.6 per cent of unsuccessful cases), the treatment complained of was not associated with the applicant's disability (15.9 per cent of unsuccessful cases) and the claim was out of time (14.7 per cent of unsuccessful cases). Treatment being justified was the reason in 12.6 per cent of unsuccessful cases.

[2] Waddington, L. and M. Bell (2001). "More Equal than others: Distinguishing the European Union Equality Directives." CMLR 38: 587-611, at 603-604.

[3] Leverton S., (2002) Monitoring the Disability Discrimination Act 1995 (Phase 2), London: Department for Work and Pensions

- The most common type of adjustment, mentioned in 35% of cases, was a transfer to an existing vacancy.

| Nature of adjustment, where known | Number of cases | % of cases where type of adjustment was known |
|---|---|---|
| Transfer to existing vacancy | 145 | 35.0 |
| Reallocation of duties | 104 | 25.1 |
| Acquiring or modifying equipment | 83 | 20.0 |
| Alteration to working hours | 76 | 18.4 |
| Assignation to different place of work | 75 | 18.1 |
| Adjustments to premises | 33 | 8.0 |
| Giving or arranging training | 31 | 7.5 |
| Modifying procedures for testing or assessment | 26 | 6.3 |
| Leave of absence for rehabilitation, assessment or treatment | 21 | 5.1 |
| Providing a carer or support worker | 18 | 4.3 |
| Providing supervision | 15 | 3.6 |
| Modifying instructions or reference manuals | 7 | 1.7 |
| Providing a reader or interpreter | 6 | 1.4 |
| Other | 55 | 13.3 |

*In many cases more than one type of adjustment was at issue. The sum of the percentages in the right-hand column exceeds 100 per cent because the percentage figures are based on the 414 cases in which the nature of the adjustment(s) was known.*

- With regard to cases in which the defence of justification was pleaded (38.7 per cent of all decided cases), applicants' success rates were relatively high where the reasons relied on by the employer related to the financial cost of making adjustments (43.8

per cent), the practicability of adjustments (39.5 per cent) and health and safety (36.8 per cent).

- However, in cases where the employer argued that the adjustment would not have prevented the effect in question, the success rate for applicants was only 20 per cent.

- In cases where it was alleged that the employer should have made a reasonable adjustment, the claims with the highest success rates for applicants related to leave of absence (47.6 per cent) and modification of procedures for testing or assessment (40 per cent). Claims involving reallocation of duties also had a relatively high success rate (38.6 per cent).
- The reasonable adjustment claims with the lowest success rates concerned acquisition or modification of equipment (21.3 per cent), provision of training (26.7 per cent) and adjustments to premises (27.3 per cent).

## Key DDA cases in relation to reasonable adjustment

### Method of proof

An early Employment Appeal Tribunal case – Morse v Wiltshire County Council [1988] IRLR 352 held that when considering the issue of reasonable adjustments, and justification for not making them, the tribunal must apply an objective test, asking for instance whether the employer has taken such steps as were reasonable, and whether any of the steps in s.6 (3) were reasonably available in the light of the actual situation so far as the factors in s.6 (4) were concerned. It stated that it could not be accepted that the tribunal can only consider whether the employer's explanation for its conduct is reasonably capable of being material and substantial. “There is nothing in the wording of ss.5 and 6 which indicates that the tribunal should not substitute its own judgment for that of the employer, and reach its own decision on what, if any, steps were reasonable”.

The s6 duty is one placed upon the employer. The fact that an applicant (or his/her advisers) cannot suggest any reasonable adjustments does not mean that the s6 duty has been discharged. In the case of Cosgrove v Caesar and Howie {2001] IRLR 653, the EAT considered an employment tribunal decision which had held that there had been no breach of the s.6 duty where neither the applicant nor her GP could think of anything that would have represented a satisfactory adjustment. The EAT overturned the decision, holding that the tribunal

had erred in reaching this conclusion when the employers themselves had given no thought to the matter. The duty to make adjustments is on the employer. It did not follow that because a former secretary, long absent from the firm and clinically depressed to the point of disability, and her GP could postulate no useful adjustment, that the s.6 duty on the employer should without more be taken to have been satisfied. There were possibilities of adjustments which might have facilitate a return to work, such as a transfer to another office or an alteration of the applicant's working hours.

## When does the reasonable adjustment duty apply?

### Arrangements

There is no definition in the Act of the term “arrangements” although the Code of Practice at paragraph 5.2, states, “the word "arrangements" has a wide meaning”. In the case of **London Clubs Management Ltd. v Hood [2001] IRLR 719** the EAT held that section 6 plainly applies to monetary benefits as well as to other arrangements.

The case of **Kenny v Hampshire Constabulary [1999] IRLR 76**, however, explored the boundary of the scope of the reasonable adjustment duty. The Employment Appeal Tribunal examined the breadth of the term “arrangements” etc. Mr. Kenny, who had cerebral palsy and needed assistance in urinating, had applied for the post of analyst/programmer with the Hampshire Constabulary; he was regarded as the best candidate and was offered the post subject to the employers being able to make appropriate arrangements for his needs. There were delays in the response to the PACT application and the employers withdrew the job offer. Mr Kenny brought a claim of disability discrimination. The ET dismissed Mr. Kenny’s complaint, finding that the withdrawal of the job offer was for a reason relating to the applicant’s disability but that the employers were justified in rejecting the possible options for providing the applicant with the necessary personal care.
On appeal, the EAT held that the arrangements which were necessary to enable the applicant to work with the respondents did not fall within the duty to make a reasonable adjustment under s.6. An employer’s duty under s.6 to make a reasonable adjustment to arrangements on which employment is offered or afforded is restricted to “job related” matters. Not every failure to make an arrangement which deprives an employee of a chance to be employed is unlawful”. The key issue in Mr. Kenny’s case appears to be the failure of the Access to Work scheme, in responding to a request for what amounted to personal

assistance. There are legitimate limitations to the obligations which should be placed upon employers, and it seems that the EAT have recognised these. Although there is no obligation upon an employer to provide such assistance, it is all the more important that the state meets these needs or severely disabled people will be effectively barred from jobs.

**Substantial disadvantage**

The case of Cave v Goodwin & anor (IDS Brief 687 June 2001), considered the nature of "substantial disadvantage" in the context of the reasonable adjustment duty. Cave was employed as a care assistant at a residential care home. He had epilepsy as well as a learning disability. Following an incident at the care home, Cave received a letter notifying him that he was suspended and request that he attend a disciplinary hearing on the basis that his behaviour might have amounted to gross misconduct. The letter also stated that Cave could ask a fellow employee to accompany him. Cave wanted H a friend who was not a fellow employee to represent him, but this was not permitted as the employers said that the person accompanying him had to be a fellow employee. Cave was accompanied by P, a fellow employee. The disciplinary hearing found that Cave was guilty of gross misconduct and dismissed him. His appeal against the decision was unsuccessful. Cave brought a claim of unfair dismissal, but as he did not have the necessary qualifying period to bring such a claim, he changed his claim to one of disability discrimination. Cave claimed a failure to comply with the duty to make reasonable adjustments because his employer had given him notice of suspension and a request to attend a disciplinary hearing in writing despite the fact that his employer knew that Cave had trouble reading because of his learning difficulties; and secondly because he had not been allowed to have his choice of person to accompany him and represent him at the hearing.
The Employment Tribunal held that Cave had been able to read most of the letter sent to him by his employer himself, and that the contents of the letter had been explained to him by two fellow employees. The written letter had not therefore placed him at substantial disadvantage. They also found that the manner in which he conducted himself at the disciplinary hearing meant that he had understood what was going on and could participate in the hearing; he had not therefore been placed at a substantial disadvantage and the duty to make adjustments did not arise.

Cave's claim was dismissed, both by the tribunal and, on appeal, by the EAT.
The Court of Appeal dismissed the appeal. Although they were critical of the employer's behaviour in relation to the letter, the Court thought that on the basis of the facts found, the tribunal had been entitled to hold that even if there had been a breach of s.6 (1) in this regard, it had not caused Cave's dismissal and there was thus no detriment on which he could found his claim. The tribunal had also been entitled to hold that the disadvantage experienced by Cave at the hearing had not been substantial. This would appear to be the correct decision on the particular facts of this case.

## Reasonableness

### Cost

It seems that tribunals have been reluctant to accept the financial costs of making adjustments as reasons for not providing such adjustments. Where employers argued that it was not reasonable to make an adjustment due to the financial cost of the adjustment, applicants' success rates at tribunal were relatively high (43.8 per cent). In **London Borough of Hillingdon v Morgan (unreported, EAT 1493/98, 27.5.99**), for example, an employment tribunal took into account the size and resources available to a local authority in deciding that the authority had failed to make a reasonable adjustment by not allowing a disabled employee to work from home on a temporary basis as a way of easing her transition back into full-time working. The EAT, upholding that decision on appeal, sent a clear message that an adjustment may be reasonable if an employer's financial and administrative resources make it feasible.

### Ability to perform job

Once the employer has made reasonable adjustments (eg to the method or structure of the job), the duty to make reasonable adjustments does not require the employer to accept reduced performance from the disabled employee (eg by lowering the quantity or volume of work being demanded): *Mulligan v Commissioner for Inland Revenue* (1999) EAT/691/99.

### Redeployment

Many tribunal decisions have suggested that the employer is required to take positive steps to facilitate redeployment and that it is not sufficient simply to expect the disabled employee to apply for a transfer. In **Slingo v Cornwall County Council (unreported, ET Case**

**No.1700409/00)** the applicant worked on road maintenance duties. In February 1998 he developed a chest problem. The condition appeared to be exacerbated by the applicant's work, and in May 1999 the applicant's doctor advised that he should not continue to be employed on the roads. The applicant applied for two alternative jobs with the respondents but was not called for interview, even though he had appropriate experience for one of the posts. Eventually, he decided that as the respondents were giving him little support in his search for alternative work, he should opt for early retirement. He then brought a claim of disability discrimination.

The tribunal upheld the applicant's complaint under the DDA, noting that the respondents were one of the largest employers in the area. They were under a positive duty to take reasonable steps to avoid the applicant's dismissal on medical grounds but had made no significant effort to do so. Instead they had placed the onus on the applicant to apply for alternative employment. In the tribunal's view this was not within the spirit or the provisions of the DDA.

The decision of the EAT in **Kent County Council v Mingo 2000 IRLR 90** goes even further. The Council operated a redeployment policy whereby employees who were at risk of redundancy ('category A redeployees') were given priority over those who sought redeployment on grounds of ill health ('category B redeployees'). Mr Mingo, who had injured his back, was treated as a category B redeployee. As a result of the Council's redeployment policy, he failed to secure alternative employment and was dismissed. The EAT upheld the tribunal's finding that the employers had failed in their duty to make reasonable adjustments under s.6 DDA. Had they allowed the employee to be treated as a category A redeployee, he would have secured a transfer.

The EAT's decision suggests that it would have been a reasonable adjustment for the Council to treat Mr Mingo as a category A redeployee. This would have put him on what the tribunal referred to as a 'level playing field' with those at risk of, or under notice of, redundancy.

However, the Scottish Employment Appeal Tribunal has recently considered a similar issue and reached a very different – and in our view incorrect – decision. The case of **Archibald v Fife Council (EAT 0025/02)** was concerned with the issue of transfer to an existing vacancy. Ms. Archibald worked as a road sweeper, Grade 1. As a result of

surgery, she suffered a complication which led to severe pain in her heels, rendering it almost impossible for her to walk. She was unable to continue working. She was dismissed and brought a claim of disability discrimination and unfair dismissal. The disability claim relied solely upon breach of s.5(2) - a failure to make reasonable adjustments. In particular, the applicant, because of her disability, was having to apply for desk jobs, which were at a slightly higher grade; the respondent had a policy that where someone was applying for a higher grade job, there had to be competitive interviews. The applicant applied for over 100 jobs but did not obtain any. She indicated to the tribunal that her failure at interview for the posts seemed to stem from the attitude taken towards her being a road sweeper.

The tribunal held that she had not been discriminated against. They had been addressed solely as to the step is s.6(3) of the Act - transferring to fill an existing vacancy (although they believed that there were in any event no other steps which the respondents could reasonably have taken in relation to the applicant) and held that there was no obligation for her not to have to partake in competitive interviews. They cited s.6(7) which states that nothing in Part II is to be taken to require an employer to treat a disabled person more favourably than he treats or would treat others. The tribunal held that even if there was a failure to comply with the s.6 duty, it was justified. On appeal, it was argued, inter alia, that the tribunal had misdirected itself in its application to section 6, as it had not categorised the implementation by the council of its policy of requiring competitive interviews for upgrading applications as a failure to take reasonable adjustments.

The EAT said that, looking at the definition quite generally, it was clearly of the view that this points to either a formal arrangement or informal working practice and goes far beyond the mere fact that a person in a certain job has become disabled.

The EAT went on to uphold the decision of the tribunal. "The policy of the Council was clearly established and applied to everyone. That is the "arrangement" in terms of section 6 and it did not place the appellant at a substantial disadvantage per se because it applied to everyone. Even if such a policy was discriminatory, it could be justified upon the basis that it is designed to obtain the best persons for the relevant job …At one point, Mr. O'Carroll [the appellant's representative] seemed to suggest that, in any event, the employer

should have removed the appellant from the application of the policy on grounds of disablement and that in itself was an adjustment that could easily have been made. Whilst we recognise that they could have offered her another job without requiring competitive interview, we do not consider that they were compelled to do so because the obligation to make an adjustment had not been triggered for the reasons we have given. Finally, in this respect, we consider Mr O'Caroll's argument would be to place disabled people in a stronger or more favourable position than those who are able-bodied because he accepted that, in essence, the appellant had a right to redeployment because of her disablement and nothing more. That, in our opinion, is precisely what subsection (7) of the section is designed to avoid". The EAT did, however, indicate that it felt that the case should have been brought on the basis of s.5(1), with regard to the interviews which took place for the posts. Although undoubtedly different on the facts, this case does not seem to accord with **Kent County Council v Mingo [2000] IRLR 90**[i4] and is potentially extremely restrictive. It is being appealed to the Court of Session, supported by the Disability Rights Commission.

An employer's duty to redeploy a disabled employee is subject to the limits inherent in the concept of a *reasonable* adjustment. For example, in Garipis v VAW Motorcast Ltd (unreported, ET Case No.1803194/99) the applicant developed vibration white finger and tenosynivitus. His condition meant that he was unable to carry out his job as a foundry operative. Efforts were made to find him alternative work but when these failed he was dismissed. There was one department where he could have worked but there were no vacancies and none of the existing employees was willing to transfer to create a vacancy for him. The applicant claimed that the respondents should have transferred someone compulsorily in order to keep him in employment. The tribunal dismissed this argument: compulsory transfer was not a practicable option because of the extent to which it would have disrupted relations with other employees.

## Access to work scheme

[4] In this case, the Council operated a redeployment policy whereby employees who were at risk of redundancy ('category A redeployees') were given priority over those who sought redeployment on grounds of ill health ('category B redeployees'). Mr Mingo, who had injured his back, was treated as a category B redeployee. As a result of the Council's redeployment policy, he failed to secure alternative employment and was dismissed. The EAT upheld the tribunal's finding that the employers had failed in their duty to make reasonable adjustments under s.6 DDA. Had they allowed the employee to be treated as a category A redeployee, he would have secured a transfer.

A key element in the successful operation of the new reasonable adjustment duty is the availability of financial support and free expert assistance from the state run Employment Service. The Access to Work programme is run by the Employment Service. It provides financial assistance towards the extra costs of employing someone with a disability. It is available to unemployed, employed and self-employed people and can apply to any job, full-time or part-time, permanent or temporary.

The type of support available includes:

a communicator at a job interview for people who are deaf or have a hearing impairment, a reader at work for someone who is blind or has a visual impairment, a support worker if someone needs practical help because of their disability, either at work or getting to work, adaptations to a vehicle, or help towards taxi fares or other transport costs if someone cannot use public transport to get to work because of their disability, special equipment (or alterations to existing equipment) necessary because of an individual's disability, alterations to premises or a working environment necessary because of a person's disability.

The funding available depends on the employment status of the disabled individual at the time of application. For:

unemployed people starting a job - the programme will pay 100% of all approved costs

people changing jobs - the programme will pay 100% of all approved costs

employed people who have been with the employer for six weeks or longer - Access to Work does not make any contribution to costs below £300. Above this sum, the programme will pay 80% of the costs up to £10,000 and 100% of the costs above £10,000

self-employed people who have been self-employed for six weeks or longer - Access to Work does not make any contribution to costs below £100. Above this sum, the programme will pay 90% of the costs up to £10,000 and 100% of the costs above £10,000

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