

# DISABLED STAFF POLICY

## Policy reference –

SUMMARY	The purpose of this policy is to set out the approach of the CCG in its aim to embrace the “social model of disability”; set out what the CCG will do to ensure that disabled staff, volunteers and job applicants do not experience barriers to employment in the CCG, and to set out key areas of policy relevant to disabled staff and potential employees.
AUTHOR (s)	Sharon Moore  Ian Corbishley
VERSION	1.2
EFFECTIVE DATE	May 2021
APPLIES TO	All employees
APPROVAL BODY	Social Partnership Forum consulted with and Workforce and Diversity Group prior to approval by the Remuneration and Nomination Committee
RELATED DOCUMENTS	
REVIEW DATE	May 2024

### VERSION CONTROL SHEET

<b>Version</b>	<b>Date</b>	<b>Author</b>	<b>Status</b>	<b>Comment</b>
1.1	23/12/2020	Sharon Moore Ian Corbishley	draft	
1.2	11/01/2021 12/05/2021	Sharon Moore Ian Corbishley	Final Version	Consultation with Trade Unions via the Leeds Area Social Partnership Forum. Ratified by RemNom 12/05/21

## CONTENTS

<b>Section</b>	<b>Title</b>	<b>Page</b>
<b>1.</b>	<b>Purpose</b>	<b>4</b>
<b>2.</b>	<b>Scope</b>	<b>4</b>
<b>3.</b>	<b>Equality Statement</b>	<b>4</b>
<b>4.</b>	<b>Accountability</b>	<b>4</b>
<b>5.</b>	<b>Definitions</b>	<b>4</b>
<b>6.</b>	<b>Responsibilities</b>	<b>5</b>
<b>7.1</b>	<b>Employing Disabled People</b>	<b>5</b>
<b>7.2</b>	<b>Reasonable Adjustments</b>	<b>6</b>
<b>7.3</b>	<b>Access to Work</b>	<b>7</b>
<b>7.4</b>	<b>Disability Leave and Disability Related Sickness Absence</b>	<b>8</b>
<b>7.5</b>	<b>Personal Assistant Support</b>	<b>8</b>
<b>7.6</b>	<b>Improving the Workplace for Disabled Staff</b>	<b>8</b>
<b>7.7</b>	<b>Preventing Unlawful Discrimination</b>	<b>8</b>
<b>8.</b>	<b>Implementation and Monitoring</b>	<b>9</b>
<b>9.</b>	<b>Connections with other Policies, Standards, References, Legislation (Associated Documents) and National Guidance</b>	<b>9</b>
	<b>Appendix A - Disability Related Leave Guidance</b>	<b>10</b>
	<b>Appendix B – Guidance and Information</b>	<b>12</b>
	<b>Appendix C - Equality Impact Assessment</b>	<b>13</b>

## 1. PURPOSE

- 1.1 The purpose of this policy is to set out the approach of the CCG in its aim to embrace the “social model of disability”
- 1.2 To set out what the CCG will do to ensure that disabled staff, volunteers and job applicants do not experience barriers to employment in the CCG, and
- 1.3 To set out key areas of policy relevant to disabled staff and potential employees

## 2. SCOPE

- 2.1 This policy applies to disabled staff employed by the CCG. It is also relevant to disabled people who are potential employees and those who undertake roles in the CCG but are not employed by the CCG such as volunteer’s, contractors, trainees and agency workers.

## 3. EQUALITY STATEMENT

- 3.1 In applying this policy, the organisation will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, sex, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation. In addition, the CCG will ensure that employees and job applicants are not unreasonably discriminated against on the basis of other characteristics including socio-economic status, offending background, political affiliation and trade union membership. An Equality Impact Assessment is used for all CCG policies and procedures.

## 4. ACCOUNTABILITY

- 4.1 The Chief Executive is accountable for this policy.

## 5. DEFINITIONS

### 5.1 Disability

The Equality Act 2010 provides a legal definition of disability inclusive of both physical and mental health; this policy applies to persons that fall within this definition. Guidance has also been published under the provisions of the Equality Act 2010 on *Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability*. Relevant areas of this guidance are referred to in this policy when considering if this policy applies this guidance should be considered.

*The Equality Act 2010 definition:*

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

### 5.2 Substantial

The Equality Act 2010 says that a substantial effect ‘means one that is more than a minor or trivial effect’. Section B (page14) of the guidance referred to in section 3.1 above provides more details of what this means in practise. Whether a person

satisfies the definition of a disabled person for the purposes of the Act will depend upon the full circumstances of the case (see appendix B).

### **5.3 Long-term means**

Have lasted or be likely to last 12 months or more. However certain conditions are deemed to be disabilities from day one these are: Cancer, HIV infection and multiple sclerosis.

### **5.4 Normal day to day activities**

The Equality Act 2010 guidance should be considered in relation to defining normal day to day activities.

### **5.5 Conditions not deemed to be disabilities**

Equality Act 2010 (Disability) Regulations 2010 set out what is expressly not a Disability. Advice on this is available from the People and OD team.

### **5.6 Disability leave**

Disability leave is paid time off to help a CCG employee manage their disability e.g. to attend appointments or consultations or have treatment related to the on-going management of their disability. Disability Leave is not the same as Disability Related Sickness Absence. (See appendix A for more details). For other types of leave, in addition to disability leave, please refer to the Annual and Special Leave Policy.

## **6. RESPONSIBILITIES**

6.1 Line managers should be aware of this policy and bring it to the attention of disabled staff in their teams and in particular adopt practice that supports the principles of the social model of disability.

6.2 Staff who are not disabled should be aware of the policy and in particular the principles of the social model of disability when working alongside colleagues who are disabled.

6.3 Disabled employees are encouraged to inform their line manager that they are disabled. While this is not obligatory, it is recommended that they do so to facilitate making reasonable adjustments. If required it may be necessary to make a referral to Occupation Health to support the facilitation of making reasonable adjustments. Disabled staff are also encouraged to complete the Electronic Staff Record (ESR) so that the CCG can monitor the numbers of staff in the CCG who are Disabled.

6.4 The People and OD Team will provide advice and support on all aspects of this policy to ensure application and implementation.

## **7. PROCEDURE**

### **7.1 Employing Disabled People**

7.1.1 The CCG will continue to aim to be an employer of choice for disabled people by:

- Maintaining the Mindful Employer accreditation and meeting the charter commitments associated with this
- Maintaining level two of the Disability Confident Employer standard as a minimum; and
- Responding positively to national initiatives and work with local partners and stakeholders to maximise opportunities to employ disabled people.

7.1.2 The CCG will maintain and publish information about the number of employees who are disabled and use national and local information such as the NHS staff survey to identify areas for improvement where these appear to be required.

7.1.3 The CCG will ensure that staff with responsibility for recruitment and line management received appropriate training about disability and employment.

## **7.2 Reasonable Adjustments**

7.2.1 It is important to note that the definition of disability in the Equality Act 2010 includes mental health.

7.2.2 The Equality Act 2010 requires that adjustments are considered in three areas, and if these are assessed as reasonable adjustments then they must be made. In the case of disability this means that a disabled employee or applicant may be treated more favourably than an employee or applicant who is not disabled.

The three areas that must be considered are:

- Where a 'provision, criterion or practice' puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to avoid the disadvantage
- Where a physical feature puts a disabled person at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to avoid the disadvantage; and
- Where a disabled person would, but for the provision of an auxiliary aid, be put at a substantial disadvantage in relation to a relevant matter in comparison with persons who are not disabled, to take reasonable steps to provide the auxiliary aid

7.2.3 How a provision, criteria or practice impacts on a disabled person needs to be considered on an individual basis and in line with current case law, this could include making changes to how a policy or practice is applied to a disabled person. Persons dealing with individual cases should seek advice from People and OD Team. It is the responsibility of the line manager or person tasked with the equivalent role to facilitate consideration of reasonable adjustments and ensure that where these have been agreed access to them is facilitated in a timely manner.

7.2.4 Delays in providing adjustments may impact negatively on disabled staff therefore arranging adjustments must be prioritised. The timescale for meeting adjustments must be agreed with the disabled member of staff, and if there is a delay agree how the identified barriers are going to be addressed in the short term.

- 7.2.5 Where changes to physical features or the provision of auxiliary aids are required the CCG does not hold a central budget and costs are met through the team budget. However the legal duty to make reasonable adjustments lays with the CCG not the team so if a cost or requirement is reasonable this must be met.
- 7.2.6 The Equality Act 2010 (Disability) Regulations 2010, include some provisions regarding reasonable adjustments which may be considered in particular when looking at providing ancillary aids and additional support or proposed changes to buildings.
- 7.2.7 A decision not to make an adjustment must be objectively justified. The People and OD Team will provide advice and support to services on making adjustments, and where appropriate, with support from Occupation Health.
- 7.2.8 As soon as a line manager is made aware that a member of staff may fall within the legal definition of disability and may therefore require adjustments they must prioritise meeting with the member of staff to discuss this.

### **7.3 Access to Work**

- 7.3.1 Access to Work grants can pay for practical support for a disabled employee or applicant to start working or stay in work. Grants are available for people over 16 who have a disability, health condition or mental health condition that affects the person's ability to work.
- 7.3.2 Grants can pay for things like:
- Adaptations to equipment
  - Special equipment
  - Fares to work if you can't use public transport
  - A support worker or job coach to help in the workplace
  - A support service if someone has a mental health condition and are absent from work or finding it difficult to work
  - Disability awareness training for colleagues
  - A communicator at a job interview
  - The cost of moving equipment if someone changes location or job

This list is not exhaustive

- 7.3.3 Disabled staff or applicants must apply for the grant themselves. However it is important that line managers are aware of this option and signpost staff who may be disabled or become disabled while they are in employment to advice and information.
- 7.3.4 Applications must be made within six weeks of starting a new position for a maximum contribution to be paid by access to work.
- 7.3.5 The People and OD will be able to provide advice, guidance and signpost appropriately about how to make an application.

## **7.4 Disability Leave and Disability Related Sickness Absence**

- 7.4.1 Disability Leave is a period of time off work which has been approved by the employer for a reason related to an employee's disability. For example, to attend a hospital appointment or to receive treatment and may be a reasonable adjustment under the Equality Act 2010.
- 7.4.2 Disability and ill health are not the same thing and disabled staff may require time off work to help them manage their disability. This type of absence is not recorded as sickness absence and is defined in section 5.6 above.
- 7.4.3 Disability Leave is not intended to apply to extended periods of absence. Periods of absence will be considered under Managing Sickness Absence Policy or Flexible Working Policy dependant on circumstances. For example; time off for disability related appointments would be considered to be disability leave; time off to adjust to the effects of an appointment would potentially be considered to be sick leave.
- 7.4.4 Disability related sickness absence is a form of sickness absence that is directly or indirectly attributed to a person's disability or long-term condition. Such absences should be flagged by the employee as relating to their disability when notifying their manager and the Managing Sickness Absence Policy will apply.
- 7.4.5 If there are any queries relating to Disability leave and sickness absence contact the People and OD team for advice and guidance.
- 7.4.6 See Appendix A for guidance on agreeing Disability Leave

### **7.4.7 Personal Assistant Support**

Disabled staff or applicants may have a personal assistant who they employ to support them. In such cases, the personal assistant's expenses would normally be covered by the disabled person or for example by an access to work grant. However if this is not the case then reimbursement of travel and subsistence allowances to allow the personal assistant to accompany the disabled person should be considered as a reasonable adjustment

## **7.6 Improving the Workplace for Disabled staff**

- 7.6.1 The CCG is committed to improving facilities for disabled employees. When undertaking new building, alterations, or site moves, consideration will be given to the need for and improvements to physical access to buildings and worksites.
- 7.6.2 Employees who have a disability or long-term health issue will be entitled to reasonable time off to attend network meetings and relevant work groups as agreed with their line manager.

## **7.7 Preventing Unlawful Discrimination**

- 7.7.1 Failure to make a reasonable adjustment (as determined at an Employment Tribunal) for a disabled member of staff is unlawful discrimination. The CCG will consider requests for adjustments carefully and will objectively justify any requests for adjustments that the CCG cannot meet, to the person making the request.

- 7.7.2 With the permission of the disabled member of staff, the CCG will encourage line managers (through provision of guidance) to liaise with colleagues when disabled members of staff move posts or premises to ensure continuation of agreed adjustments.
- 7.7.3 Making reasonable adjustments is an on-going requirement which should be reviewed at regular intervals.
- 7.7.4 All staff volunteers' contractors and agency workers are expected to meet the requirements of the Equality and Diversity Policy. Negative attitudes and banter associated with disabled people will not be tolerated and it is the responsibility of all staff to challenge this in all areas of the workplace.

## **8 IMPLEMENTATION AND MONITORING**

- 8.1 The Remuneration and Nomination Committee is responsible for formal approval and monitoring compliance with this policy. Following ratification the policy will be shared with staff in the e-bulletin and will be available on the CCG website.
- 8.2 The policy and procedure will be reviewed periodically by the Workforce and Diversity Group in conjunction with people and OD team representatives and trade union representatives where applicable. Where review is necessary due to legislative change, this will happen in a timely manner.
- 8.3 NHS Leeds CCG is committed to ensuring that all personal information is managed in accordance with current data protection legislation, professional codes of practice and records management and confidentiality guidance. More detailed information can be found in the CCG's Data Protection and Confidentiality and related policies and procedures.

## **9. CONNECTIONS WITH OTHER POLICES, STANDARDS, REFERENCES, LEGISLATION (Associated Documents) AND NATIONAL GUIDANCE**

- Recruitment and Selection Policy
- Equality and Diversity Policy
- Promoting Attendance and Managing Sickness Absence
- Equality Act 2010
- The NHS People Plan - commits the NHS to a range of programmes that directly relate to disabled staff such as improving access to flexible working, retaining staff, reducing bullying and harassment and supporting more diverse leadership teams.
- NHS Employers – An Inclusive Approach to Disability Leave
- NHS Constitution – Specific section referring to the rights of staff working in the NHS.
- Social Model of Disability – removing barriers and finding solutions e.g. flexible working

## Appendix A – Disability Related Leave Guidance

The following is a guide to reviewing and agreeing **Disability Leave**

Disability Leave is defined in section 5.6 of this policy and is the definition that should be used in any cases that are unclear.

The following are some examples of Disability Leave but each case should be considered on its own merits and this list is not exhaustive.

- Treatment related to an employee's disability such as hospital, doctors, or complementary medicine practitioner's appointments, hospital outpatient appointments associated with managing a disability
- Auxiliary aid assessments and fittings
- Assessment for conditions such as dyslexia
- Appointments for assessments to do with hearing or sight where the person is Disabled in line with the guidance - *Matters to be Taken into Account in Determining Questions Relating to the Definition of Disability*
- Training with guide or assistance dogs
- Counselling/therapeutic treatment attendance at Workplace Wellbeing
- Recovery time after blood transfusion or dialysis treatment
- Physiotherapy.
- Dose Adjustment for Healthy Eating (DAFNE) course generally recommended for people with type 1 diabetes
- Blood tests for diabetes, cancer or other conditions and treatment or tests and recovery time
- Diabetes Education and Self-Management for On-going and Newly Diagnosed (DESMOND) generally recommended for people with type 2 diabetes.
- Dialysis treatment
- Having equipment serviced or fitted

The following case study illustrates the difference between Disability Leave and Disability Related Sickness Absence.

Farah, a member of your team informs you that she has breast cancer. Under the Equality Act 2010 guidance Farah is disabled from day one of her diagnosis. Farah starts chemotherapy and then has surgery, she is provided with a fit note from her GP for the full period of the treatment and surgery. The fact she is Disabled is considered when she hits trigger points under the CCG policy and the absence is noted as **Disability Related Sickness Absence**.

Farah returns to work; however, one outcome of her cancer is that she has problems with her arm swelling because her lymph nodes have been removed. Although she is able to return to work this has affected her ability to do some tasks that involve heavy use of her arm for example lifting and personal care. You meet with Farah and agree that it would be a **Reasonable Adjustment** for her to avoid tasks that involve lifting and personal care and that this will be reviewed every 6 months.

## **Agreeing Disability Leave**

- Agreeing Disability Leave is not a formal procedure it should take place between the line manager and the disabled member of staff.
- Disability Leave may come up, for example, as part of advice from occupational health, through an access to work assessment or requested by a disabled member of staff.
- The main principle to apply in agreeing Disability Leave is to what extent agreeing the absence will assist the member of staff to remain at work.
- Disability Leave will be agreed between the line manager and the disabled member of staff. It will be useful to record agreements on Disability Leave as part of agreements on Reasonable Adjustments.
- Requests for absence related to staff who are not themselves disabled, but who care for a Disabled relative or friend should be made through the carers leave policy.
- Agreements related to Disability Leave must be regularly reviewed the frequency will depend on the type of absence agreed.
- Disability leave should be considered as a reasonable adjustment and should be dealt with on a case by case basis rather than a prescribed maximum number of days annually.

## **Recording Disability Leave on ESR**

Disability leave should be recorded separately from sickness and disability related sickness absence. This is to ensure employees are not adversely penalised for short term absence related to a disability. This helps safeguard against unlawful discrimination towards disabled employees.

- Records of Disability Leave should be recorded with regard to attendance records in line with CCG guidance.
- You should actively encourage staff to declare their disability on the NHS Electronic Staff Record (ESR)

## **Appendix B – Guidance and Information**

### **Definition of Disability Equality Act 2010 Guidance**

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality\\_Act\\_2010-disability\\_definition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf)

### **Equality Act 2010 (Disability) Regulations**

<https://www.legislation.gov.uk/uksi/2010/2128/memorandum/contents>

**An Inclusive Approach to Disability Leave** – NHS Employers February 2020 – a guide to understanding the difference between Disability Leave and Disability Related Sickness Absence

<https://www.nhsemployers.org/case-studies-and-resources/2020/09/an-inclusive-approach-to-disability-leave>

**Matters to be taken into Account in Determining Questions Relating to the Definition of Disability** - Provides details guidance on the definition of Disability in the Equality Act 2010

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/570382/Equality\\_Act\\_2010-disability\\_definition.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/570382/Equality_Act_2010-disability_definition.pdf)

**Employing disabled people and people with health conditions** - This government guidance covers a range of information including advice on specific conditions and links to additional guidance

<https://www.gov.uk/government/publications/employing-disabled-people-and-people-with-health-conditions/employing-disabled-people-and-people-with-health-conditions>

### **Social Model of Disability – Scope UK**

<https://www.scope.org.uk/about-us/social-model-of-disability/>

## Equality Impact Assessment

<b>Title of policy</b>	Disabled Staff Policy	
<b>Names and roles of people completing the assessment</b>	Sharon Moore, Equality, Diversity and Inclusion Manager  Ian Corbishley, HR Manager	
<b>Date assessment started/completed</b>	<u>Started:</u> 24/12/2020	<u>Completed:</u> 13/01/21

1. Outline	
<b>Give a brief summary of the policy</b>	This policy sets out a procedure.
<b>What outcomes do you want to achieve</b>	For the policy to comply with statutory requirements and best practice.

2. Analysis of impact			
This is the core of the assessment, using the information above detail the actual or likely impact on protected groups, with consideration of the general duty to;  eliminate unlawful discrimination; advance equality of opportunity; foster good relations			
	<b>Are there any likely impacts?  Are any groups going to be affected differently?  Please describe.</b>	<b>Are these negative or positive?</b>	<b>What action will be taken to address any negative impacts or enhance positive ones?</b>
<b>Age</b>	No		
<b>Carers</b>	No		
<b>Disability</b>	Yes	Positive	
<b>Sex</b>	No		
<b>Race</b>	No		
<b>Religion or belief</b>	No		

<b>Sexual orientation</b>	No		
<b>Gender reassignment</b>	No		
<b>Pregnancy and maternity</b>	No		
<b>Marriage and civil partnership</b>	No		
<b>Other relevant group</b>	No		
<b>If any negative/positive impacts were identified are they valid, legal and/or justifiable? Please detail.</b>	No anticipated detrimental impact on any equality group. The policy is applicable to all employees and adheres to statutory requirements and best practice. Makes all reasonable provision to ensure equity of access to all employees. There are no statements, conditions or requirements that disadvantage any particular group of people with a protected characteristic.		

<b>4. Monitoring, Review and Publication</b>			
<b>How will you review/monitor the impact and effectiveness of your actions</b>	No negative impacts identified therefore no actions identified		
<b>Lead Officer</b>	Sharon Moore & Ian Corbishley	<b>Review date:</b>	13/01/21

<b>5. Sign off</b>			
<b>Lead Officer</b>			
<b>Director</b>	Sabrina Armstrong, Executive Director of Corporate Services	<b>Date approved:</b>	13/01/21