

Disability Discrimination Act Consultation Document: Guidance on matters to be taken into account in determining questions relating to the definition of disability

Response from the Royal College of Psychiatrists

The Royal College of Psychiatrists welcomes the opportunity to comment on the consultation document relating to the Disability Discrimination Act and the definition of disability. The Royal College of Psychiatrists is the leading medical authority on mental health in the United Kingdom and the Republic of Ireland and is the professional and educational organisation for doctors specialising in psychiatry.

Question 1

The Government would like to know whether you think this structure is the right one. If no, please explain why.

The division into two parts seems appropriate and adds to the clarity of the document. Even with this structure it remains important that sufficient examples are given in areas where there is lack of clarity in the Act. This particularly relates to examples of disability related to mental ill-health, where the Act remains unclear.

In addition, it is important that the examples given are clear as it is generally acknowledged that there is often insufficient understanding of mental health problems by the general public. It should be made sufficiently clear that mental health problems often produce disabilities that are not readily obvious and that in most cases the disorders are fluctuating.

Question 2

The Government would like to know whether you think this format helps towards an understanding of how the individual elements of the definition of disability interrelate. If no, please explain why.

The format does help in this regard. However, the addition of further examples of forms of mental ill-health and disability would assist in clarifying the interaction.

Question 3

The Government would like to know whether you think the text is clear enough in its explanation of how the definition of disability works. If no, please explain why.

There remains a lack of clarity about how the definition applies to schizophrenia and affective disorders (particularly depression and bipolar affective (manic depressive) disorders). Some amendments to the text and additional examples would be helpful.

Some specific points in the text that should be given attention are:

1. A6 on page 4. The second bullet point should include 'mental health problems' in order to make clear that these types of problems are important here.
2. A6 on page 4. For the sixth bullet point, it would be illuminating to include Bipolar Affective Disorders, Obsessive Compulsive Disorders and Personality Disorders in the list.
3. A9 on page 6. It should be made clear that mental impairments may result from mental illnesses, but that there are other causes, for example learning disability.
4. A14 on page 7. It should be made clear that it is the disability resulting from a mental disorder that is the important factor, not the severity. In the case on page 7 the word 'severe' made be considered superfluous in the sentence "...such as alcohol may also have severe depression".
5. B7 on page 11. Effects on behaviour. It may not always be reasonable for people with mental health problems to change their behaviour even if this causes them problems. In this case it should be made clear that they may also be expected to alter their behaviour if they can reasonably do so.

Question 4

The Government would like to know whether you think there are any parts of the text that are hard to understand. If so, please tell us what they are.

The text is generally clear but would benefit from further illumination through the addition of examples (see below).

Question 5

The Government would like to know whether it is equally clear how a person with a mental impairment is covered, compared to a person with a physical impairment. If not, please tell us what you think.

There remains some lack of clarity in the Act relating to some forms of mental disorders, particularly Schizophrenia, Depression, Bipolar Disorders and Obsessive Compulsive Disorder.

a. Schizophrenia

The example of Dr Goodwin may show how a person with a diagnosis of schizophrenia may have problems being defined as disabled. He experienced persecutory delusions, hallucinations and thought broadcasting. He wandered down a railway line in order to kill himself. His hallucinations interrupted his concentration at work. The Employment tribunal found that he was not disabled because he was able to do everything mentioned in Guidance. They decided therefore that the interruption to his concentration was not substantial and that his perception of risk of physical danger was not affected, as he was well aware that walking along a railway line would present a risk of physical danger. The outcome of his appeal was that the decision was reversed, by the Employment Appeal Tribunal (EAT) taking a common-sense approach. In this case the central aspect of his condition was one of disordered perception of reality rather than inability to concentrate. This example may be useful in showing how such a case may be included if disordered perception is taken into consideration.

b. Depression

Not all people with depressive disorders fit into the list of day-to-day activities, despite experiencing a wide range of symptoms such as: disruption of normal sleep patterns, withdrawal from social life, loss of appetite, loss of interest, confidence and pleasure, ideas of self-harm, intermittent panic attacks and others. None of these experiences are satisfactorily summed up in the list of normal day-to-day activities. An example covering someone with depression who may not have loss of concentration would be a useful addition to those examples of disorders already included in the guidance.

In addition, depression is a relapsing condition for which individual episodes may last for less than 12-months. It would be illuminating if an example of this type of relapsing condition were included in the guidance.

c. Bipolar Affective Disorders

People with these disorders also have relapsing conditions and may be perfectly well between acute episodes. They are often profoundly unwell during their acute episodes and, as their disorder is enduring, are often profoundly disabled. The addition of an example of a person with a bipolar affective would assist in illuminating several aspects of the guidance and would be a welcome supplement.

d. Obsessive Compulsive Disorder (OCD)

People with OCD often have complicated ritual, often repetitive actions such as hand washing which may preclude other daily activities, or may be preoccupied by rounds of repetitive thoughts. These problems may be hidden, but in both cases the person's ability to carry out day-to-day activities is adversely affected.

Question 6

The Government would like to know whether you consider that examples have been used appropriately. Would other parts of the text benefit from examples? If yes, please say where.

The examples given above could be placed in several areas of the document. For example:

Person with schizophrenia.

- a. Memory or ability to concentrate, learn or understand. D26 on page 39. These are cognitive functions and all may be affected by the delusions or hallucinations experienced by someone with schizophrenia. The so-called negative features of schizophrenia may also affect attention and memory.
- b. Cumulative effects of an impairment. Page 10. An example of someone with schizophrenia, especially with longer term problems, would add to that of depression already included.
- c. Recurring or fluctuating effects p 18. An example of a person with schizophrenia who had recurring acute episodes would be useful here.
- d. Speech. D25 on page 35. People with schizophrenia may have incoherent speech and is often referred to as thought disorder. This is more strictly a form of speech disorder.

Person with depression.

- a. Cumulative effects of an impairment. On page 10. An appropriate example has already been placed here.
- b. Recurring or fluctuating effects. C5 on page 18. Two examples have already been placed here, but the second one may not be appropriate and should be removed. In this second example it is not clear whether the woman's depression will recur, but it is the likelihood of this happening that is crucial to this case, rather than the timings given in the text. In this case the impairment should be treated as continuing to have an adverse effect if it is likely to recur. This second case could be replaced by an example of someone with a bipolar disorder.

- c. Memory or ability to concentrate, learn or understand. D26 on page 39. An example of depression would fit well here.
- d. Perception of physical danger. D27 on page 41. It would be appropriate to include a case of someone with depression with suicidal thoughts. This would give a substantial adverse effect on the perception of danger.

Person with a Bipolar Disorder

- a. Memory or ability to concentrate, learn or understand. D26 on page 39. All these functions may be affected in a person with a Bipolar Disorder, often to different and fluctuating degrees (as with schizophrenia). This would be a good place to provide such an example.
- b. Cumulative effects of an impairment. Page 10. The effects on repeated episodes of mania and/or depression has a cumulative effect on social functioning which is not always clearly recognised. An example at this point would be illuminating.
- c. Recurring or fluctuating effects. C5 on page 18. An example of a person with a Bipolar Disorder may replace the second example of depression (see above).
- d. Speech. D25 on page 35. Bipolar disorder may affect speech during acute episode and is often referred to as manic thought disorder. As with Schizophrenia this is a form of speech disorder.
- e. Perception of physical danger. D27 on page 41. In addition to experiencing suicidal thoughts, people with bipolar disorders may engage in risky behaviour, particularly when they are 'high'. In both cases there would be a substantial adverse effect on the perception of danger

The guidance would be illuminated and, it may assist in providing people with disabilities related to mental ill-health with better protection from the Act, if these multiple examples were provided. These examples are all based on actual cases of people who have found the present Act wanting.

Question 7

The Government would like to know whether the examples are helpful in adding to an understanding of the related text. If no, please explain why.

The examples of people with mental ill-health (including that of Asperger's Syndrome) already included in the text are helpful (with the exception of the woman with depression in C5. Further examples such as those given above would further illuminate and would be consistent with the experiences of people with mental ill-health with the present Act.

Question 8

The Government would like to know whether there are particular points which you consider might usefully be illustrated by examples. If yes, please explain what these are.

The examples are those given above and cover the points of:

1. Aspects of their disorders that are not clearly covered by the headings of the normal day-to-day activities.
2. Recurring or fluctuating aspects of the disorders
3. Cumulative effects of the impairment

Question 9

The Government would like to know whether the distinction between 'capacities' and 'normal day-to-day activities' has been made sufficiently clear. Please tell us what you think.

The distinction has been made generally clear, but would benefit from some examples as suggested above.

Question 10

The Government would like to know whether the bullet point examples are clear enough and whether they help to illustrate the concept of a substantial adverse effect on day-to-day activities. Please tell us what you think.

Under 'Memory or ability to concentrate, learn or understand' (page 39), a bullet point of 'disordered perception' should be added. This could be supplemented by an example of someone with Schizophrenia and/or Bipolar Disorder.

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