

I'll just run through some... Well, I'll start with an introduction.

My name is Emma Cooper and I'm Chief Exec of the Pertuitary Foundation.

We're really delighted to have a full programme of online events through 2025.

That's thanks to my colleague, Nesta, who's on the call.

She's called the Pertuitary Foundation because she's on our admin account.

Nesta is our volunteering and support services officer and has set up all of these online talks.

If you've been to any of these before, you know that usually we have a medical expert giving a talk and we usually get some feedback afterwards.

Actually, one One of the bits of feedback that we've taken on board is that people have said it'd be great to have a talk on this topic to do with employment law and living with a condition like a pituitary condition.

We were really pleased that Esra McDonald, who is actually a trustee of the Pertuitary Foundation and has been a trustee for several years now, has very kindly offered to give this talk tonight.

That's the introductions.

Just in terms of housekeeping, we are recording the session tonight and we will put that on YouTube tomorrow, but we only record the bits of the talk.

We don't record the Q&A.

As I said, it's nice to see people.

If you're happy to put your camera on, but of course, you don't need to do that, we do ask for you to go on mute, and there is going to be plenty of time for questions, and we ask that you put those in the chat.

What I do is I keep an eye on that, and when Esra's finished, I'll field those questions and try and get as many answered as possible.

What else?

Recorded, not in the Q&A.

Yes, usually we have a disclaimer on our talks saying, This is not medical advice.

You need to consult with your endocrinologist.

Esra has kindly made this more to tonight's talk, which is this is not legal advice, so if in doubt, to seek that out.

But you're very welcome to ask questions, bearing in mind that disclaimer.

But yeah, Esra, I think that's all of the intros.

Over to you.

It would be great to hear Yeah, you'll say a little bit about your time with the Pertuitry Foundation as well.

Yeah, great. Thank you very much.

I'll start with the intro.

I've been a trustee now for, gosh, probably somewhere approaching 10 years, I think. Must be getting on for 10 years.

I've seen the foundation change and grow a lot in that period and it's been a delight to. It's been a delight to be part of it.

When I'm not acting as a trustee, I'm a barrister.

I'm in practise at Punk Court Chambers.

I do a lot of employment law.

I do a lot of disability discrimination claims.

There are a lot of them around.

The more interesting point from my point of view is what happens before we get to that stage and what you can do that avoids the need for any legal action.

I will, at the end, answer any questions anyone's got,

but I will emphasise I can't give legal advice,

can't give anything specific, and say general things about how the law works.

And so that's roughly what I'm intending to do today.

I'm going to do my best Chris Whitty impression and say, Nestlé,

could I have the next slide, please?

So these are the topics that I wanted to try and cover.

I'm going to take about 25, 30 minutes for the talk,

and then open the floor up for questions.

So the first question I want to deal with is what counts as a disability?

That's really important because all of the legal protections

that give you, for instance, the right to reasonable adjustments

depend on being able to show that you've got, in legal terms, a disability.

So I'll talk about that.

I'll talk about three types of discrimination.

So failure to make reasonable adjustments, that's one.

Indirect discrimination, that's two.

And the more complicated one, a bit of a mouthful,

discrimination because of something arising in consequence of disability.

It sounds much more complicated than it is.

It's super useful to know about.

I'm also going to touch on some basic topics, medical leave,

sickness absence, statutory sick pay, what the rules are about that.

I'll then turn to what to do when something goes wrong,

also ways to solve problems before they get legal.

And then last, I've got some pointers to sources of information

and guidance at the end.

I haven't included Google as one of my sources of guidance,

but Google is always there. It's an option.

It has to be used with caution. Nesta, the next slide, please.

So disability.

The definition of disability is in Section of the Equality Act.

I should say it's the Equality Act 2010.

That's your key bit of legislation.

It tells us that a person has a disability if they have a physical or mental impairment.

Pausing on that one, Almost certainly, if you've got a medical condition, you've got a diagnosis, you will tick the box that says you've got a mental or physical impairment.

But you don't necessarily have to have a diagnosis, because if the rest of the test is met, the tribunal might well say, Well, look, if you can't do what the people around you can do easily, there must be something that's causing it.

So the rest of the test is that the impairment has a substantial long-term adverse effect on your ability to carry out normal day-to-day activities.

And that's worth unpacking.

So I'll unpack it in the next slide. If I could, please.

This is what you need to know about the meaning of the words substantial and long-term.

Substantial Substantial just means more than minor.

So it's a really easy threshold to meet.

I don't see many cases where people say, or successfully argue, that the effect of an impairment wasn't substantial.

The argument is more likely to be over whether it's long term.

And long term means either it has lasted for at least 12 months, this is the effect that we're looking at, or it's likely to last at least 12 months.

And likely to, in this context, means could well.

So it's not more than not.

It's just an impairment where the effect is substantial and it could well last 12 months or more.

So that's the test for what is substantial and whether it's long term.

And then the other bit of the test is normal day to day activities.

You might think, what on earth are those?

My next slide will tell you.

So I've given a reference there to a website.

That's the Equalities and Human Rights Commission's

Employment Statutory Code of Practice.

I think these slides will be distributed at the end, and you can either click on the link or you can just Google the EHRC code, and it tells you on page 288, if you don't know where to look,

that normal day-to-day activities include, although they're not limited to, things like walking, driving, using public transport, cooking, eating, lifting, carrying everyday objects, typing, writing, etc.

So they're the things that normal people would do in the course of a normal day.

The important thing to note is they are normal day-to-day activities, they're not highly specific activities.

So for example, suppose you are a long-distance lorry driver, you'll be required to drive very long distances on busy roads in a single stretch.

That is not a normal day-to-day activity.

Driving, on the other hand, just driving generally, would be a normal day-to-day activity.

Could I have the next Can I have a slide, please?

I'm going to pause on disability before I talk about reasonable adjustments.

Disability is quite an easy thing to establish.

It's quite straightforward, really, if you've got a long-term health condition condition that has a knock-on effect on what you can actually do day-to-day.

It's quite easy to say, This is the impairment, it's my long-term health condition.

And what it means for me is it makes me fatigued, we have difficulty going

out and socialising, so on, so forth.

But you will need at some point to let your employer know

that you've got the disability and what the consequences of that disability are.

And I'll come back to that in a bit.

Of the provisions in the Equality Act that make employers have to do stuff

for employees, the one everyone seems to know about is reasonable adjustments.

It is legally quite complicated.

I find it baffling why it's so complicated.

It's a bit of legislation that is designed to be used by ordinary human beings,

not just lawyers, so it shouldn't be quite as complex as it is.

But I'll do my best to break it down.

You need to show, in order to persuade a tribunal, for instance,

that the employer has got to make reasonable adjustments,

you've got to show that there is a practise criterion or provision.

In plain English, that's just what the employer does

which places you, as a person with a disability,

at a substantial disadvantage compared to someone without a disability.

Once you show that, then the employer has got to make

reasonable adjustments to reduce or remove the disadvantage.

And the example I've given, and I'm going to come back to this example

because it's quite a neat example, is suppose you have an employee with a pituitary condition which causes fatigue.

The employer's practise criterion or provision, the thing that they're doing, is they require their employees to work long hours, say 9: 00 till 6: 00.

That practise puts someone prone to fatigue at a disadvantage compared to someone without fatigue because it makes them less able to get through the working day or to fulfil the requirements of the job.

So that triggers the duty to make adjustments.

And then the question becomes, what sorts of things would be reasonable adjustments?

The EHLC code gives examples.

Common things I might see are longer breaks, more breaks, modified Equalities might be another one, or shortened working hours would be another.

So that's reasonable adjustments, sections 20 and 21 of the Equality Act.

Next slide, please.

The second form of discrimination I wanted to just mention is indirect discrimination.

You find it in Section 19 of the Equality Act.

The basic form of a claim in indirect discrimination is there's something the employer does, say a requirement coming to work 9: 00

till 6: 00, and it applies it to everyone, but it places disabled people at a particular disadvantage compared to non-disabled people.

Now, the difference between reasonable adjustments claims and indirect discrimination claims is that for a reasonable adjustments claim, all you need to show is that you got put at a disadvantage.

For an indirect discrimination claim, you need to show that disabled people as a group got placed at a disadvantage, so it's harder to to prove.

For that reason, I tend to say, just ignore indirect discrimination.

It doesn't really add anything.

I might also add, there is another form of discrimination which I haven't dealt with at all and I'm not really going to deal with, and that's direct discrimination.

Direct discrimination is where, for example, you've got an employer who really doesn't like ethnic minorities because they're racist, or they really don't like gay people because they're homophobic, something like that.

Nine times out of 10, the issues that arise between employers and individuals with disabilities isn't because they're disabled, it's because the disability means they have difficulty doing the job or they need adjustments.

It's very rare to find cases of direct disability discrimination.

Focus on reasonable adjustments, and focus on the next slide, please.

So deep breath.

My next slide is discrimination because of something arising
in consequence of disability.

This one is super important.

You find it in Section 15 of the Equality Act.

I'm going to tell you legally how it works, and then I'll give you an example.

So to succeed in a claim for Section 15,

I'm just noting a question.

I can make some general observations about that question, but I
can't get specific advice. I'll do that later.

Section 15 says it is discriminatory to treat someone unfavourably, just
means bad because of something arising in consequence of disability.

The employer can defend it if they can show that what they did was
a proportionate means of achieving a legitimate aim.

So a worked example is this.

Suppose you've got someone who suffers from fatigue.

That makes it more difficult for them to meet their performance targets.

The employer hauls them into a capability meeting and sacks them on the basis

that they're not doing the Well, that is unfavourable treatment.

That's the first bit.

It's because of poor performance.

And the poor performance arises in consequence of the disability because it's caused by fatigue.

So Section 15 is all about what are the effects of the condition and has your employer treated you badly because of those effects?

What are the consequences of the condition?

Another example would be, suppose you have somebody who needs to take more time off to attend medical appointments and their employer gets really unhappy and a bit narved with repeated absences from work and disciplines them.

That, again, would be unfavourable treatment because of a consequence of the condition.

The consequence is the employee needs to take more time off work to go to medical appointments.

In terms of the defence, the employer can raise a defence if it's a proportionate means of achieving a legitimate aim.

That's got two bits.

One is legitimate aim, and usually, well, take my example about the employee

with fatigue who's underperforming, the employer probably does have a legitimate aim, which is making sure its employees are performing.

The argument is going to be about what's proportionate.

Proportionate in disability discrimination legislation, and indeed in quite a lot of other bits of legislation, just means no more than necessary.

So the question is, could the employer have done something less discriminatory?

And the answer is usually going to be yes.

They could have made adjustments, they could have made allowances.

And I see in the chat that Ryan has just guessed what I'm going to deal with in the next slide, please.

Well, this might be the slide after next. I will get there.

The obvious question is, what do I need to tell my employer?

My general guidance, not formal legal advice,

my general guidance, talk to your employer, be upfront, let them know.

It helps if you've got some input from a GP or a specialist.

It might be an occupational therapist involved.

Any expert, whether they be the consultant at your

local hospital or whether they be a treating physiotherapist,

will be able to give useful information.

Occupational health, in my view, are super, super helpful.

So I think if you get offered a referral to occupational Occupational Health, treat it as an opportunity.

Employers do not want to be taken to tribunal.

They will be bending over backwards to try to manage things so that they are staying on the right side of the law.

And the information they get from occupational health will be helpful.

Occupational health will know more than the employer knows.

There's another reason for being fairly keen to cooperate with occupational health, which is if occupational health recommend a certain adjustment, it's a pretty bold employer who then ignores that advice and refuses to make that adjustment.

So engage with occupational health.

But the person you're going to know the most is going to be you.

So I always recommend that individuals just set out in plain English what's going on with them, what they need from the employer, and how it's going to help them.

In terms of how to pitch it, this is important.

It is always It's worth being super nice.

Even if your employer is being super difficult, and I really hope they're not, but even if your employer is being super difficult,

you will get much more mileage out of saying, This is the issue that I'm dealing with.

This is the thing that's happening at work.

This is the effect of my condition, and this is what I need in order to adjust the working environment to let me function.

You get much more mileage out of that than saying, This is outrageous.

This is scandalous. I demand X, Y, or Z.

So it's a tactical consideration.

Could I have the next slide, please?

I'm just checking to see at what point I deal with the issue of knowledge.

Okay, so a slide, this is in time, I thought.

The slide has dematerialised, so I'm going to tell you what was in it.

On the question of what the employer needs to know.

This is important. This is super important.

In order for the employer to be under a duty to make reasonable adjustments, they've got to either know or be in a position where they could reasonably be expected to know, both that the employee has the disability and that they are likely to be placed at the substantial disadvantage.

So take my example of the employee with fatigue.

The employer is not obliged to do anything until they know, or could reasonably be

expected to know, that the individual has a pituitary condition, which is long term and is causing fatigue, and in fact is impacting on their normal day to day life, and that the requirement to work long hours is putting that person at a disadvantage.

So you need to tell the employer what's going on, and you need to give them enough information because if you don't, they're not obliged to make adjustments.

That information can come from you.

It can come from occupational health.

In terms of the Section 15 claims, this is also important, what the employer needs to know is that the person has a disability.

That's all they need to know.

They don't need to be told that the underperformance is due to the fatigue caused by in the pituitary condition.

However, I reckon it's always prudent to tell the employer, because if you tell the employer what's going on, they can't then turn around and say, Well, you can't expect us to do stuff.

We've got no idea that we had no way of knowing.

So tell your employer.

Moving on.

Medical appointments and sick leave.

I'll just deal with this quite quickly.

Medical appointments is a common one, and it does end up in tribunal.

I've dealt with numerous cases where people have taken time off work for medical appointments and it's caused issues.

There is no specific right to take time off for medical appointments.

However, good luck to the employer who refuses it.

Generally speaking, I'd say if you need lots of time off for a medical appointment, that is probably going to be a reasonable adjustment.

Note also that if you get penalised for taking time off for a medical appointment, assuming that the need to go to medicals is because of a condition which amounts to a disability, that could well be discrimination because of something arising in consequence, i. E.

Section 15 of the Equality Act.

So although there's no right to do so, you've probably, if you've got a disability, got pretty good grounds for asking your employer for the ability to do so.

I always say, check the contract, see what contract employment says, check what the policies say.

And I also thought it was a sensible idea to do with sick pay.

Now, there's two ways you can get sick pay.

It might be in the contract, so check contract.

It can be statutory.

Statutory sick pay is complicated as the next slide will show, please.

Okay, two conditions, two things you need to do to get statutory sick pay.

Number one, tell your employer you're not fit for work.

Number two, gives them some evidence.

The default procedure for telling your employer is you got to do it within seven days of the date on which you become unfit for work.

In terms of evidence, you are looking for the first seven days for self-certification.

You just say, I'm not fit for work.

And if you're What goes beyond that, your employer can, and almost always will, want to see a doctor's note, what used to be called a sick note, and it's now called a fit note.

Make of that what you will.

You will get SSP if you're off for four or more days.

You won't get it for the first three days.

All of that might change the current is looking to legislate to make

it more favourable to employees. Sorry, we shall see.

Could I have the next slide, please?

What do you do if it goes wrong? First step, negotiate.

Be nice, be firm, be polite, but J.

If there's a union, talk to your union.

Unions can, but not always.

They can be super helpful.

Third step is raise grievance.

That will raise the temperature slightly.

If your grievance says, I've been discriminated against,

then the employer is not allowed to treat you badly because you've

complained about discrimination.

If they did that, they would end up in tribunal.

You would be bringing a claim for victimisation under

Section 27 of the Equality Act.

The fourth step, if you really can't sort things out with your employer,

the fourth step is contact ACAS.

I will provide a link in the slides. Acas can help.

They can negotiate on your behalf, essentially.

If need be, you will start a process called early conciliation.

You've got to go through early conciliation before you issue a tribunal claim, if you're going to go down route.

Tribunal proceedings, the last resort.

Again, this isn't legal advice, but if anyone comes to me saying,

I'm thinking of going to tribunal, my first bit of advice is, don't.

It's very expensive if you have lawyers involved.

It's always stressful. It's always time consuming.

There are cases in which it's the only option.

The thing you need to know, the thing that can catch people out is

there is a time limit in the tribunals.

It is a short time limit.

It is three months, less one day from the thing you're complaining about.

So if on the second of January, your employer says,

I'm docking your pay because you've been off sick and you want to complain about

that, the main time of it is January, February, March, April.

You've got until the first of April to bring a claim.

That period can get extended by early conciliation.

If in doubt, ask a lawyer. This stuff is complicated.

Could I have the next slide, please.

Coming towards wrapping up, sources of information.

Acas. Acas is super useful.

They've got a load of information on the website.

It is in plain English. It's really good.

I recommend it.

There's the EHRC code.

That's a massive document.

It's hundreds of pages, but it's also quite easy to read.

It's in plain English and it's got an index.

If you want to know more about how reasonable adjustments claims work,

have a look at the EHRC Code.

The Equality Act.

This is the main bit of legislation that you'd be looking at.

It trips lawyers up-time and time again, this piece of legislation.

It's really not easy to grapple with.

You might, if you've been really brave, look at sections 15,

20, 21, and section 6.

But beyond that, you probably do want to get a lawyer involved.

The last source of information I've got is a link at the bottom to a case,

a case of Ms. Fittoyer Adaloyer, I hope I'm pronouncing that right, and Guyson St.

Thomas's NHS, NHS.

I'm just going to rattle through that very quickly.

Could I have the next slide, please?

This was a case in which the claimant had a pituitary condition caused her all sorts of problems, including headaches and dizziness.

She also had fatigue.

She was in a job that required a lot of manual handling.

Manual handling made her condition worse.

She had to take a lot of sick leave to attend medical appointments.

She had to go for surgery. I think she went for surgery in Germany.

In due course, the Trust discussed her on capability grounds, saying, You can't do your job anymore.

She said, Well, that's a failure to make reasonable adjustments because you could have changed my role.

It's Section 15, Discrimination arising in consequence of disability, because you could have done something less discriminatory.

You could have given me a job that didn't involve loads of manual handling.

And the tribunal agreed with this.

They thought, Look, Guys in St.

Thomas's is a massive trust.

They employ something like 17,000 people, and they've got piles of jobs going.

The tribunal found in favour of the claimant,
she got £21,000 in compensation, mostly loss of earnings,
a bit of injury to feelings, so compensation for the effect it had on her.
She also got a chunk of money towards her legal costs.
That is super unusual in the tribunal's.
You only get costs as a rule if someone has behaved unreasonably.
That probably goes to show what a dim view the tribunal took
of the way that guys in St. Thomas's had treated the.