

## What is cancer?

Cancer is an illness that affects many people of all ages. Around 1 in 3 people<sup>i</sup> in the UK will develop some form of cancer in their lifetime. There are approximately 700,000 people of working age with cancer in the UK<sup>ii</sup> with a further 109,000 diagnosed every year.<sup>iii</sup> Due to advances in cancer treatment people are living longer following a cancer diagnosis: currently there are 2 million cancer survivors in the UK and that figure is expected to rise to 4 million by 2030<sup>iv</sup>.

In addition to the significant physical impact of cancer, for many people there is also a psychological impact of a cancer diagnosis.

## Cancer– the clinical explanation

Cancer is a disease caused by normal cells changing so that they grow in an uncontrolled way. The uncontrolled growth causes a lump called a tumour to form. On its own a tumour could make an individual quite ill, for example by pressing against nerves, blocking the digestive system or blood vessels, or by releasing hormones that can affect the normal workings of the body.

Should a tumour become malignant and spread to other parts of the body then this becomes more difficult to treat and can make an individual very ill because more parts of the body are affected.

## Types of Cancer

### Carcinomas

Most cancers, about 85%, are carcinomas. They start in the epithelium, which forms the covering of the body (skin) and the lining of the organs in the body. The common forms of breast, lung, prostate and bowel cancer are all carcinomas.

### Leukaemias and lymphomas

These occur in the tissues where white blood cells (which fight infection in the body) are formed, i.e. the bone marrow and lymphatic system. Leukaemia and lymphoma are quite rare and make up about 6.5% of all cancers.

### Others forms of cancer

Brain tumours, sarcomas and other very rare forms of cancer make up the remainder of cancers.

## The effects of cancer and its treatment on a person

How cancer and cancer treatments affect a person will depend on:

- **The cancer** - the type of cancer, where it is in the body, how fast it is growing and whether it has spread to other parts of the body (advanced cancer);
- Cancers may cause a number of different symptoms that may impact on an employee at work, for example; abnormal bleeding, tiredness, unexplained weight loss and pain;
- **The treatment** - the types of treatments used, how long treatment is given for, and the side effects of treatment;
- Cancer treatments can cause a variety of side effects. These may include being more prone to infection, fatigue (extreme tiredness), sickness, mouth problems (for example, sore or dry mouth), digestive problems (for example, loss of appetite, diarrhea) nerve damage (for example, tingling or numbness in fingers or toes) and hair loss;
- **Other health problems** - whether the person has other significant health problems for example heart problems, chest problems, or diabetes.

For many people with cancer there may be times during their illness and / or treatment when they feel tired and unwell. This may be due to a combination of the symptoms caused by their cancer and side effects from their treatment.

Usually any treatment related side effects settle after treatment has ended although some may persist for some weeks or months afterwards. Only rarely are the side effects of cancer treatments permanent.

People who have an advanced cancer are more likely to have ongoing tiredness and other symptoms. In this situation their treatment may be aimed at controlling these symptoms and improving quality of life, rather than curing the cancer.

## Cancer and Employment

Under the Equality Act (2010) cancer is recognised as a disability from the point at which it is diagnosed.

However only three in ten people with cancer personally consider cancer to be a disability, and only four in ten know that cancer is covered by disability discrimination legislation<sup>v</sup>. This means that you, as employers, play a critical role in helping someone with cancer work through, or return to work after, treatment for cancer.

## **Pre-employment**

The Equality Act makes it unlawful to ask applicants general questions about their health or a disability prior to making a job offer. This provision is designed to prevent employers making assumptions about an applicant's capability because of their medical history.

You can ask applicants if they need reasonable adjustments for the interview and you can also ask applicants questions about their ability to carry out intrinsic elements of the job. For example, a construction company is recruiting scaffolders. The company can ask about health or disability on the application form or at interview if the questions relate specifically to an applicant's ability to climb ladders and scaffolding to a significant height. The ability to climb ladders and scaffolding is intrinsic or fundamental to the job.

In practice, even if a function is intrinsic to the job, you should ask a question about a disabled person's ability to do the job with reasonable adjustments in place. There will therefore be very few situations where a question about a person's health or disability needs to be asked<sup>vi</sup>.

## **Recruitment and selection**

You need to make sure that you do not discriminate against an employee with cancer or who has had cancer in the past. You also have to make reasonable adjustments during the recruitment process; however, some people with cancer may not require any adjustments at all.

It is important not to make assumptions about what an applicant can or cannot do. Instead ask applicants about reasonable adjustments as part of the recruitment process. If you use external recruitment agencies, ask for evidence they make reasonable adjustments for disabled applicants and work to the standards that underpin this guidance.

It is important to be specific about what skills are needed and what the job involves when drawing up job descriptions and person specifications. This will give a person with cancer a clear understanding of what is required from them should they be successful in their application.

When advertising a job use positive language such as “we welcome applicants with disabilities and long-term health conditions” and provide a point of contact (available by both telephone and email) for people who are concerned about the recruitment process.

## **Interviews and tests**

Before inviting a candidate to interview, make sure you ask about any reasonable adjustments that they may require. Some adjustments that may be necessary include:

- Being flexible with interview times or dates to accommodate an applicant's

medical appointments;

- Allowing a break during an assessment day for an applicant to rest or take medication;
- Disability Awareness Training for your interviewers.

More information can be found in our Briefing 'Managing Recruitment'.

## **Working arrangements to retain employees with cancer**

It is natural for an individual to have a range of feelings and emotions following a cancer diagnosis. These emotions may make it difficult to concentrate or work effectively. You may therefore need to support your employee whilst they are adjusting to this new diagnosis. This support might include:

- Ensuring the employee has access to an Employee Assistance Programme (EAP) if you have one;
- Provide disability equality awareness training for all staff and additional training for line managers so that they are confident and effective in managing disabled employees and making reasonable adjustments;
- A buddying system where an employee with cancer can talk to someone about any issues they are having at work.

Some people will be able to proactively manage their own condition and may require few if any adjustments. However, others may need adjustments in order to support their return to work. These can include:

- Modifying equipment or the work station for people who have mobility difficulties as a result of cancer;
- Allowing extra breaks to help an employee cope with fatigue;
- Moving a work base – for example, transferring to a ground floor office if breathlessness makes it difficult to climb stairs;
- Providing somewhere private for rests or taking medication.

Depending on the nature of the individual's condition and the effects of their treatment people with cancer may also require changes to their working pattern or job role. The adjustments that might be needed include:

- Adjusting performance targets to take into account the effect of sick leave/fatigue etc on the employee;

- Assistance with a phased return to work, whereby hours are gradually increased over a period of time;
- Modifying a job description to take away minor parts of the job that cause particular difficulty;
- Allowing working from home.

When all possible reasonable adjustments have been considered, if an employee is unable to perform the core duties of their existing role because of a disability, you have a duty to consider redeployment. 'Transferring the disabled person to fill an existing vacancy' should be the final reasonable adjustment you consider.

The adjustments listed above are examples of the type of adjustment a person with cancer might need, the list is not exhaustive. In order to identify the most appropriate and effective adjustments it's important to speak to an employee about their own individual challenges as every person will have a different experience with cancer.

## **Managing absences**

People with cancer should not be unjustifiably discriminated against for a reason arising from their disability in the attendance management process.

Whilst some employees will need time off to cope with the effects of treatment or for surgery, do not assume that every employee with cancer will have a high level of sickness absence. They may need the occasional clinic appointment or set periods of time off for operations or procedures, however you should be notified of these absences in advance. Also, an employee who has received a new diagnosis of cancer may need some time off to adjust to what is happening. This type of absence might be categorised as 'Disability Leave' and could be considered as a reasonable adjustment; this time off should be paid if reasonable. Disability Leave is not a legal term; however it can be a useful way of categorising absence.

You may need to:

- Allow time off to attend appointments for assessment, treatment or rehabilitation;
- Ensure that you have a scheme in place that distinguishes between sickness absence taken for a reason relating to a disability and general sickness absence;
- Ensure that adjustments are made in processes to manage attendance and sickness absence so that disabled employees are not treated unfavourably for a reason arising out of their disability; It might be a reasonable adjustment in some cases to discount some or all disability-related sickness absence;

- Allow the employee to work flexible hours to overcome fatigue from treatment;
- Be understanding. The employee will be much more likely to try come into work if s/he knows that s/he can take a break or go home if necessary.

## **Q & A**

Q. During an interview a candidate told me they had previously had time off due to breast cancer. Can I ask them about this?

A. Except in very restricted circumstances or for very restricted purposes, you are not allowed to ask any job applicant about their health or any disability until the person has been:

- Offered a job either outright or with conditions, or
- Included in a pool of successful candidates to be offered a job when a position becomes available (for example, if an employer is opening a new workplace or expects to have multiple vacancies for the same role but doesn't want to recruit separately for each one).

This includes asking such a question as part of the application process or during an interview. Questions relating to previous sickness absence count as questions that relate to health or disability.

No-one else can ask these questions on your behalf either. So you cannot refer an applicant to an occupational health practitioner or ask an applicant to fill in a questionnaire provided by an occupational health practitioner before the offer of a job is made (or before inclusion in a pool of successful applicants) except in very limited circumstances, which are explained next.

The point of stopping employers asking questions about health or disability is to make sure that all job applicants are considered on the basis of whether they can do the job in question, and not ruled out just because of past issues related to or arising from their health or disability, such as sickness absence, which may well say nothing about whether they can do the job now.

You can ask questions once you have made a job offer or included someone in a group of successful candidates. At that stage, you can make sure that someone's health or disability will not prevent them from doing the job. But you must consider whether there are reasonable adjustments that would enable them to do the job.

Q. An employee has just told me they have cancer, what should I say to the individual and should I tell the rest of the team?

A. Encourage the person to have a confidential and supportive discussion with their line manager (if that isn't you) or HR manager.

Communication and note-taking should be handled sensitively – this is not a grievance meeting.

Try not to make assumptions about their condition and what might happen next. Let them take the lead by telling you what has happened. Remember that most cancers are treatable and the person is likely to be able to carry on working.

Ask the person:

- How they are feeling, emotionally and physically;
- Whether they wish colleagues to be informed and what information should be shared;
- What sort of time off they might need for medical appointments and during treatment (they may not know at this point - it's often a case of seeing how things go);
- You could also offer any services your organisation to help them (for example, an employee assistance programme that provides counselling);
- Make sure you close the meeting with an assurance that your employee's work is valued and that your door is always open if they need your assistance. Agree how you will keep the lines of communication open, and set a date for the next meeting so you can keep on top of the situation;
- It may also be a good idea to record any adjustments that are agreed using Business Disability Forum's Tailored Adjustment Agreement form which is available from [advice@businessdisabilityforum.org.uk](mailto:advice@businessdisabilityforum.org.uk)

## **Legal position**

### **Disability discrimination under the Equality Act 2010**

#### **What is a disability?**

The Equality Act gives rights to disabled people who have, or have had, a disability which makes it difficult for them to carry out normal day-to-day activities. The term 'disability' covers both physical and mental impairments that have a substantial and a long-term effect on the person's ability to carry out normal day-to-day activities. A long-term effect is one which has lasted, or is expected to last, at least 12 months or the rest of the person's life if shorter.

Medical or other treatment and aids, which alleviate or remove the effect of the impairment, are to be disregarded when assessing whether the impairment has a substantial adverse effect on normal day-to-day activities. This means people with conditions such as insulin dependent diabetes, epilepsy or depression may be protected.



The exception is people who wear spectacles or contact lenses – the effect on them must be assessed while the person is wearing the spectacles or contact lenses.

Progressive conditions, which have a slight effect on day-to-day activities but are expected to become substantial, are covered, as are conditions that have a substantial effect for short periods but are likely to recur.

Cancer, HIV and multiple sclerosis are deemed to be disabilities from the date of diagnosis. People with severe disfigurements are also deemed to be disabled by the Act as are people who are registered as blind or partially sighted with their local authority or an ophthalmologist.

People who have had a disability in the past which had a substantial adverse effect on their normal day-to-day activities for a period of at least 12 months are also protected by the Act. This is the case even if their disability existed before the Equality Act or its predecessor, the Disability Discrimination Act 1995 (DDA) came into force and they have now fully recovered.

## **Reasonable adjustments**

An employer has a duty under the Equality Act to make reasonable adjustments (which includes providing auxiliary aids such as a support worker or information in alternative formats) to prevent a disabled employee from being placed at a substantial disadvantage by any physical feature of the premises, or by any provision, criteria or practice of the employer.

The duty applies to all aspects of employment, including recruitment and selection, training, transfer, career development and retention and redundancy. Failure to make a reasonable adjustment to a policy procedure or practice, or to a physical feature of the workplace where this is placing a disabled person at a substantial disadvantage, is unlawful and cannot be justified. Examples of reasonable adjustments for people with cancer are given throughout this briefing.

When deciding whether or not an adjustment is reasonable an employer should consider the:

- Effectiveness of the adjustment in preventing the disadvantage;
- Practicality of the adjustment;
- Financial and other costs of the adjustment and the extent of any disruption caused;
- Extent of the employer's financial or other resources;
- Availability to the employer of financial or other assistance to help make an adjustment, for example through the Access to Work scheme and the support of Jobcentre Plus.



## **Discrimination**

### **Direct discrimination**

It is unlawful for an employer to treat a disabled job applicant, or employee, less favourably, simply because of their disability. This type of discrimination is known as direct discrimination. It is unlawful and cannot be justified.

### **Discrimination arising from disability**

Discrimination arising from disability which occurs when:

- An employer knows or could reasonably be expected to know that the person is disabled;
- The disabled person experiences unfavourable treatment which arises as a consequence of their disability.

There is no requirement for a comparator i.e. the disabled person does not have to show that they have been treated or would have been treated less favourably than someone else.

An employer can justify detrimental treatment arising out of a disability if they can show that it is a proportionate means of achieving a legitimate aim.

### **Indirect discrimination**

The Equality Act has introduced the new concept of indirect disability discrimination.

Indirect discrimination occurs when a seemingly neutral provision, criterion or practice that applies to everyone places a group who share a characteristic e.g. a disability at a particular disadvantage.

Indirect discrimination may be justified if it can be shown that the provision, criterion or practice is a proportionate means of achieving a legitimate aim.

## **Equality Duty**

Public authorities and those carrying out public functions are required by the Equality Act to promote equality of opportunity for disabled people.

This includes ensuring that third parties, such as recruitment agencies who provide services to the authority, do not discriminate against disabled people and that they positively encourage disabled candidates to apply for jobs within the authority. The duty also means that authorities need to think in advance about the needs of both disabled employees and potential disabled employees. Authorities should bear this in mind when reading this briefing.

As well as the Equality Act, there is also a “statutory” Code of Practice on Employment. “Statutory” means that it is produced under the legislation; it is admissible as evidence and must be taken into account by courts and tribunals where relevant.

## **Access to Work Programme**

Access to Work is a Government run programme that offers disabled people financial support for reasonable adjustments in the workplace, such as adaptations to premises or purchase of equipment. For more information contact an Access to Work Adviser who will tell you more about the programme and how it could help you. Contact details of the Access to Work business centre nearest to you can be found through Jobcentre Plus ([www.jobcentreplus.gov.uk](http://www.jobcentreplus.gov.uk)).

This factsheet has been produced with advice from Macmillan Cancer Support.

## **For more information contact:**

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<sup>i</sup>Cancer Research UK. Cancer incidence by age - UK statistics  
<http://info.cancerresearchuk.org/cancerstats/incidence/age/index.htm>  
(Accessed 26 August 2010). This estimate is for 15-64 year olds in 2007.

<sup>iii</sup> Maddams J., et al. Cancer prevalence in the United Kingdom: estimates for 2008. *British Journal of Cancer*. 2009. 101: 541-547; Maddams J., et al. Cancer prevalence in the UK, 2008. [http://library.ncin.org.uk/docs/080714-TCR-UK\\_prevalence.pdf](http://library.ncin.org.uk/docs/080714-TCR-UK_prevalence.pdf) (Accessed 26 August 2010). This estimate is for 18-64 year olds in 2008.

<sup>iii</sup> Cancer Research UK. Cancer incidence by age - UK statistics  
<http://info.cancerresearchuk.org/cancerstats/incidence/age/index.htm>  
(Accessed 26 August 2010). This estimate is for 15-64 year olds in 2007.

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<http://www.macmillan.org.uk/GetInvolved/Campaigns/Survivorship/Livingwithorrbeyondcancer.aspx>

<sup>vv</sup> YouGov Plc survey commissioned by Macmillan Cancer Support. Total sample size was 1740 adults. Fieldwork was undertaken between 26 July and 9 August 2010. The survey was carried out online. The figures are unweighted.

<sup>vi</sup> <http://www.equalityhumanrights.com/advice-and-guidance/guidance-for-employers/the-duty-to-make-reasonable-adjustments-for-disabled-people/questions-about-health-or-disability/>

<sup>vii</sup> Further information on disability leave is available from Business Disability Forum's briefing paper "A practical guide to managing sickness absence".