

At OCD Action we explore options, secure your rights, provide representation and enable you to take the opportunity to regain power and control over your life.

OCD & WORK

YOUR RIGHTS

On World Mental Health Day this year, Gordon Brown joined the ranks of those calling for an end to the stigma of mental ill health and urged a “change in attitudes and a fresh openness to recognise mental health issues across our society,” but for people who want to re-enter the world of work after months or years of unemployment, how quickly is that change going to come?

Present government policy is to find ways to enable those with long or short term mental health problems to return to work and there are now a number of groups and individuals who can provide support for you if you want either to return to work or perhaps start work for the first time. Your local job centre should have access to a ‘Disability Employment Advisor’. If they don’t, then ask to speak to a ‘Personal Advisor’ or ‘New Deal Job Broker’. Specialist mental health schemes also provide assistance and you can find out what exists in your area by asking your local CAB, or Social Services, or Community Mental Health Team.

However, in spite of all the help on offer, many people contacting OCD Action are worried that they may be discriminated against if they declare their condition on any job application form. Below are some ideas and options for you to consider, but this area of employment law is a specialism and is constantly developing so if you are having issues or dilemmas about disclosing your OCD that aren’t answered by general guidance, then you should seek legal advice.

You can access free legal advice from the community legal service helpline and guidance can also be obtained from organisations such as the Law Disability Service, the Equality and Human Rights Commission, ACAS and the TUC as well as such services such as the Mind Legal Helpline. It is always best to check whether the adviser handling your call is legally qualified, if it is more than just general background advice that you are seeking.

A good place to start is with guidance issued by the Trade Union Congress (TUC) who represent millions of workers in this country. The TUC provides a number of information booklets both for employers and employees and in its booklet *“Representing and supporting members with mental health problems at work”* endorsed by the Equalities and Human Rights Commission, it states:

“Many people with mental health problems will have conditions that fluctuate and it may be that they can go for long periods without having any particular difficulties. This means that many more people with mental health problems can obtain employment successfully, provided that employers are positive about developing an inclusive work culture that focuses on supportive solutions for individuals and improving the work environment for everyone..”

If however you are considering working and you have OCD, then there are two pieces of legislation that you

should be aware of and that could influence whether or not you disclose that you have OCD to your employer.

THE DISABILITY DISCRIMINATION ACT (DDA) 1995

The DDA says that Employers or Education providers are not allowed to discriminate against you because you are disabled. OCD can be classed as a disability (at the point of diagnosis) under the Disability Discrimination Act 1995.

TUC GUIDANCE IS AS FOLLOWS:

“Disabled people are not under a legal obligation to disclose their disability or long term health condition, although if they chose not to do so, this may affect their ability to assert their legal rights under the Disability Discrimination Act (DDA) See paragraphs 7.27 and 7.28 of the Disability Rights Commission’s Statutory Code of Practice on Employment and Occupation available from the Equality and Human Rights Commission website www.equalityhumanrights.com. Decisions over disclosure are deeply personal, but unions should encourage members to disclose their mental health problem to the employer, as the onus is then on the employer to make reasonable adjustments” (*Representing and supporting members with mental health problems at work- Guidance for Trade Union Representatives- TUC*)

WHAT THIS MEANS IS:

If your potential employer has made reasonable attempts to

find out about your health condition and you have not disclosed it, you may not be able to make a claim for discrimination under the Disability Discrimination Act 1995 (DDA), as the employer can argue that they were not aware of your condition.

If you do disclose any mental health conditions, you have the right for such information to be kept confidential. Any information disclosed is protected both by the DDA and the Data Protection Act 1998.

HEALTH AND SAFETY AT WORK ACT 1974

Depending on the type of job you apply for, you may also be asked to complete a medical questionnaire (though this process is being reviewed under legislation that may come into effect later this year). This questionnaire is to assess whether there is a medical reason why you cannot do the job. If your disability or health condition has an effect on your ability to do the role, then the employer must consider any adjustments that would reduce this. The Health and Safety at Work Act states that if your disability could cause implications for the health and safety of yourself or your colleagues, you must tell your employer. If safety issues relating to your disability were to result in an accident at work and you had not told your employer about it, you could be held legally responsible. Remember, employers (in theory) cannot use any information to discriminate, only to anticipate any reasonable adjustments that may be needed.

Lying on your application form could at worst put you in breach of the Health and Safety at Work Act and at best put you at risk of dismissal at a later date as your employer could argue that you have provided false or inaccurate information to them (you may have had to sign a declaration on the end of your application to say that the information you have provided is accurate and true).

From recent case law it seems much depends on the actual questions asked and how you answer them and because of this we would suggest an expert opinion of a lawyer who specialises in this area should be sought if you are having difficulties with your application. It is worth noting that changes in equality, legislation are imminent and these may impact upon the questions that employers can ask potential employees before a job offer is made.

TO DISCLOSE OR NOT TO DISCLOSE

Having considered your options and looked at the pitfalls of disclosure or non disclosure and taken relevant advice, you may feel that there is no reason to disclose your condition as it is not relevant and will not interfere with your work. Perhaps you have concerns about being rejected by an employer or that assumptions will be made about your ability to do the job, or that you will not get promoted. Although negative attitudes certainly do exist, there is a strong argument for disclosing. Many employment agencies and advisors advise disclosure

because it is a proactive, empowering approach that has you setting the agenda. It gives you the opportunity to present your disability confidently and positively. Remember there are many ways of disclosing. For example, you may want to put something about your mental health condition in a covering letter with your CV, which could help explain gaps in your education or employment record. You may feel more confident explaining your condition in person at your interview if you feel at ease. An employer can only ask questions about any reasonable adjustments that need to be made and are not entitled to quiz you about personal details and history. Remember to keep their focus on your *ability* rather than your disability.

Some people feel that disclosing their disability early in the application process simply allows a recruiter to discriminate negatively that much sooner and that they won’t even be considered for the job. Others accept the message put out by a number of employers that disclosing early gets things out in the open, allows the employer to prepare for any special provisions required during the selection process, and even gives them an early opportunity to identify talent from an under-represented group in the workplace.

Some employers are keen to employ disabled people. Look out for the ‘two ticks’ disability symbol on job advertisements - this means that an employer has made some commitment to employing disabled people.

OCD AND WORK

THE PROS

■ It can be very stressful to be in a situation where you feel you have to hide an illness- this could make you feel worse.

■ By disclosing, you give your employer the opportunity to help and support you. Problems at work can then be seen as a result of your illness rather than of poor performance.

■ By disclosing, you have protection under the Disability Discrimination Act, if you have not disclosed you may have problems accessing your rights under the Act.

■ If you choose to disclose, you are setting the agenda and are able to portray your OCD in the most positive way you can and counter any unproductive stereotypes that your employer could come across if he or she found out that you had the condition.

■ Your employers may be happy to 'up' their intake of employees with disabilities- it looks good on their books!

■ You are likely to feel more empowered and confident if you are accepted into a job where you know that your employers are aware of your condition and are seeking to make adjustments to help you.

■ Your disability information is confidential – your rights are protected under the Data Protection Act 1998 and if you

disclose, you can remind your employer of their obligation to keep this information confidential.

THE CONS

■ Discrimination against people with any mental illness is still common even in enlightened companies. You may feel labelled by your disability.

■ Your long term career goals may be affected, if your employers think you may become ill at some point.

■ You may not see your OCD as a disability even if the law does.

■ If your employer is not familiar with OCD, he/ she may be nervous of you and treat you differently.

■ Information may be shared inadvertently or otherwise with colleagues. (It is worth checking the privacy/ confidentiality policy of your intended employers). If information is spread about your condition without your consent your employers may be in breach of the Data Protection Act.



TIPS FOR DISCLOSURE

- Be clear and as confident as you can be about explaining your condition- do it in layman's terms and don't blind them with science!
- If it helps, take in pre-prepared statement or fact sheet about the condition (OCD Action can help here).
- Try not to be emotive but factual.
- Don't go on at great length- just be precise
- Think about practice and transferable skills you have learnt as a consequence of managing your OCD and major on them.
- Make clear to your employer any adjustments that would have to be made and why; but emphasize the positive things you could bring to your job, your skills abilities and experiences.
- Do not assume that your employer will have a negative attitude towards you because of your OCD – they may not.
- Remember they should only ask you questions related to your OCD and how it will affect your work, field off other personal questions.
- If you are unsure about what you need to disclose, you can speak to a careers advisor at your local job centre.



If you would like further information about OCD please contact the
OCD Action Helpline on 0845 3906232 or visit www.ocdaction.org.uk