



Equality Hub

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Dr Patrick Roach
General Secretary, NASUWT
By email at: Lynn.Bayliss@mail.nasuwt.org.uk

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Dear Dr Roach,

Thank you for your letter dated 21 June 2021, addressed to the Minister for Women and Equalities, concerning “Long Covid” (or Post-Covid Syndrome as the NHS describes it), its effect on some teachers and what you consider to be a resulting rise in cases of discrimination by employers. I am replying as Minister for Equalities and I apologise for the delay in my response

I note your concerns and agree that employers should, within reason, be making allowances for staff with this condition where it is affecting their ability to work or the hours that they can currently work. Allowances might include, but are not limited to:

- Phased return to work
- A flexible working arrangement
- Shorter, more frequent breaks
- Providing necessary auxiliary aids and services

Long Covid should be treated in line with how other medium to long term health conditions are in employment law. This means that an employer must act reasonably if, for example, they wish to make an employee redundant on ill health grounds.

The question of disability protection under the Equality Act 2010 (the Act), for which my Department has responsibility, raises different issues. You are considered to be disabled under the Act if you have a physical or mental impairment that has a ‘substantial’ and ‘long-term’ negative effect on your ability to do normal daily activities.

‘Substantial’ is more than minor or trivial, e.g. it takes much longer than it usually would to complete a daily task like getting dressed. ‘Long-term’ means 12 months or more, e.g. a breathing condition that develops as a result of a lung infection.



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You'll see from that last example that the legislation already has the scope to encompass some of the more serious effects of Long Covid, provided the "long term" test is also met.

Once a teacher (or indeed any employee) meets the definition of disability, their employer is then legally obliged to make any reasonable adjustments that they might need, to continue in their job. This could mean for example extra time off work so that they can attend hospital for treatment or a variation in their duties or hours. For example a teacher with a lung condition might reasonably ask to be excused from supervising a school excursion or active participation in a sports day. If they require periodic hospital treatment, it is likely to be reasonable for a school to grant time off for this.

Currently there are only three conditions that are automatically specified as disabilities in the Act: cancer, multiple sclerosis and HIV infection. No Government since 2010 has sought to add to this list, for a number of reasons, but a key factor has been the challenge of appropriately defining a condition and the question of longevity, given the need for a fit with the Act's general approach to the length of time that a condition must persist for in order to qualify as a disability.

Having considered the available evidence, I am not at present convinced that a compelling case exists for adding Long Covid to the list of automatic disabilities. Not all cases – i.e. those at the less severe end of the spectrum - will be suitable for such a classification. In some cases, the condition appears to fluctuate and it is unclear at this point whether Long Covid will turn out to be a truly long-term condition for current sufferers.

Where a teacher with Long Covid believes that they have experienced unlawful disability discrimination – including a failure to make reasonable adjustments – it is open to them to make a claim against their employer through an Employment Tribunal. As part of this process they are required to make initial contact with the Advisory, Conciliation and Arbitration Service (Acas), which provides free authoritative and impartial advice to employees/applicants and employers via their website (www.acas.org.uk) and via their telephone helpline (0300 123 1100 or text relay 18001 0300 123 1100). Anyone who contacts Acas will be offered the opportunity to use the early conciliation service. If the process does proceed to court, the Employment Tribunal will decide whether an act of discrimination has taken place.

The Equality Advisory and Support Service (EASS) also provides free bespoke advice and in-depth support to individuals with discrimination concerns and can be contacted via their website - <http://www.equalityadvisoryservice.com/>, or by telephone on 0808 8000082 or textphone on 0808 8000084. The EASS can also advise people who wish to take their complaint further on their options.



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We are enormously grateful to teachers for their resilience and service throughout the pandemic and now in support of recovery. Supporting the wellbeing and mental health of staff is crucial to creating a supportive culture in schools and this is why we have worked in partnership with the education sector, including NASUWT, and mental health experts to inform and deliver commitments to protect and promote staff mental health and wellbeing. We funded a pilot, led by the charity Education Support to provide peer support and one-to-one supervision from experts to school leaders. We are building on this with a longer-term programme to be delivered to around 2,000 school leaders from this autumn. All employers have a duty of care to their employees, and this extends to their mental health.

The Department for Education published the [Education Staff Wellbeing Charter](#) for schools and colleges to sign up to. This can be used to inform a whole school or college approach to wellbeing or develop a staff wellbeing strategy. The charter also sets out the actions that the government and other organisations, including Ofsted, will take to improve wellbeing of all staff in schools and colleges. We are also acting to promote flexible working in schools and to encourage schools to implement strategic approaches to flexible working. We have published supportive resources including [guidance and case studies](#) and have appointed [eight flexible working ambassador schools](#) to champion flexible working and share best practice with other schools. Alongside this, free training is on offer for school leaders in how to implement effective flexible working practices. We have worked in partnership with the education sector on our approach to promote flexible working and are grateful for NASUWT's input into our Flexible Working Advisory Group.

You also raised the question of teacher ill health pensions. That area of policy is the responsibility of the Department for Education and I understand that the NASUWT has already been in touch with that Department on this and general welfare issues related to Long Covid.

I'd like to reassure you that the Government will continue to monitor the situation for teachers and indeed all employees as we hopefully start to emerge from the grip of the pandemic.

I hope this information is helpful.

Yours sincerely,

Kemi Badenoch MP
Minister for Levelling Up Communities and Equalities