

***CORDELL v FOREIGN & COMMONWEALTH OFFICE – EXPENSIVE ‘ADJUSTMENTS’
FOR DEAF DIPLOMAT WERE NOT REASONABLE***

Public authorities are under a specific duty when carrying out their functions to have due regard to the need to eliminate unlawful disability discrimination and promote equality of opportunity for disabled persons. Private employers are also subject to the duty to make ‘reasonable adjustments’ for disabled employees.

Ms Cordell, First Secretary to the embassy in Poland and who is profoundly deaf, accepted a promotion to the post of Deputy Head of Mission in the embassy in Kazakhstan. The Foreign & Commonwealth Office (FCO) had paid for lip-speaker support in her previous job costing £100,000 per year. However, when the FCO discovered that the cost of providing her with lip-speaker support would be unduly excessive in Kazakhstan, it withdrew the offer of promotion. The tribunal held that the FCO did not breach its duty to make reasonable adjustments.

In reaching its decision the tribunal considered the following:

- The overall annual cost of the proposed adjustment was assessed to be in the region of £249,500. This was more than five times Ms Cordell’s salary and more than the entire annual cost of employing local staff at the Kazakhstan embassy
- The proposed adjustment would account for a large amount of the FCO’s disability budget (which was £562,934 in 2009/10) and exceeded the next largest expenditure on disability adjustments for an individual by about £200,000
- The cost of other allowances paid by the FCO was considered. The highest costs under the FCO’s Continuity of Education Allowance policy (under which the FCO pays £25,000 per child towards the cost of private education for diplomats’ children) were likely to be £175,000 plus travel costs
- The FCO introduced a Reasonable Adjustment (RA) policy. This provided for an evaluation and recommendation on the reasonableness of adjustments costing over £10,000 by a disability team. The tribunal concluded that the FCO’s consultation process under the RA policy was “*conscientious and extensive*”.

➤ **Practical Tips**

The following are some of the factors you may wish to take into account when considering the “reasonableness” of an adjustment for disabled persons:

- Whether taking any particular steps would be effective in preventing the substantial disadvantage in question
- The practicability of the step
- The financial and other costs of making the adjustment and the extent of any disruption caused

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- The extent of the employer’s financial or other resources
- The availability to the employer of financial or other assistance in making an adjustment (such as advice through Access to Work)
- The nature and size of the business.

Prior to the introduction of the Equality Act, employers were required to have regard to these factors. Whilst the Equality Act makes no reference to specific factors which must be considered, these factors will continue to be relevant in the majority of cases.

Ultimately when considering the ‘reasonableness’ of any step, Tribunals apply an objective test and will take into account the facts of each particular case. The careful and detailed analysis undertaken by the FCO in this case, no doubt assisted a favourable outcome.

If you require any specific advice in connection with the material contained in this bulletin, or on any other Employment Law issues, please contact: Paul Chamberlain in Manchester on 0161 836 8864, Andrew Cross in Liverpool on 0151 600 3062 or Kevin James in Preston on 01772 229847.

If you no longer wish to receive the bulletin please let us know by return e-mail to kimberley.malcolm@brabnerscs.com

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