



## **Health Enquiries and Applicants for Work NEU guidance for members in England & Wales**

This document is intended to clarify the circumstances in which existing and prospective employers are entitled to make enquiries about a worker's health. The document does not seek to diminish the importance of health for teachers and support staff, but to dispel some of the myths which may give rise to discriminatory practice.

### **Is there a level of fitness that I am required to meet as a teacher?**

There are regulations setting out activities which teachers must have "the health and physical capacity to carry out", such as planning, preparing and delivering lessons. The regulations do not say how an employer should go about determining whether a job applicant has the health and physical capacity to carry out the activities specified. There is no general health standard that teachers must meet.

Statements appearing in the Teacher Development Agency's 2007 guidance document, *Able to Teach*, that teachers and trainees "need a high standard of physical and mental fitness to enter or remain in the teaching profession..." are an inaccurate reflection of the law. Teachers and trainees are required to be able to carry out the activities set out in regulations, no more and no less. Whether that requires a high standard of physical and mental fitness (which in any event is too subjective a test to be lawful) will depend on the particular requirements of the job concerned.

### **When may an employer assess my fitness to teach?**

Enquiries about your health will normally be made as part of the process of pre-employment checks once you are appointed. Guidance from the Department for Education (DfE) says that where teachers are changing schools a "medical adviser may, where it seems reasonable, consider medical records from previous employment to decide that the person is fit to teach". For newly qualified teachers, the guidance says that a "medical adviser should obtain details of the applicant's medical history from the medical adviser to the training provider". These steps are recommended only once an applicant is appointed subject to satisfactory health checks.

### **How should I respond if a pre-employment health questionnaire is attached to my job application form?**

The NEU takes the view that the practice by some employers of issuing pre-employment health questionnaires to all job applicants, rather than to the successful job applicant(s), is likely to be unlawful given the general prohibition in the Equality Act against pre-employment health enquiries. If you are asked to complete a pre-employment health questionnaire at the job application stage, it is for you to decide whether or not to complete it, but you should inform the union of this practice so that the matter can be raised with the employer separately.

### **What should I do if the job application form asks how many sickness absence days I have had in my existing or previous employment?**

Any question in a job application form relating to sickness absence amounts to a pre-employment health enquiry and is likely to be prohibited under the Equality Act. You may decide to answer the question if you feel that answering it will not damage your

prospects of being shortlisted for interview, but you are not obliged to do so. In any event, inform the union of this practice so that the matter can be raised with the employer separately.

**What if there is an equality monitoring form attached to the job application form?**

Questions about disability and health can be asked prior to appointment for the purpose of monitoring the diversity of job applicants. Schools and local authorities which sign up to the Disability Confident scheme, for example, may refer to completed equality monitoring forms prior to interview to ensure that disabled applicants who meet the minimum requirements for the post are shortlisted for interview. You may be concerned that some employers will use equality monitoring forms to weed out applicants with health conditions. While the union cannot guarantee that this does not and will not happen, it does nevertheless recognise the importance of equality monitoring forms as a tool for advancing equality of opportunity in the workplace. If you are concerned that your equality monitoring form will be misused, you may complete and return the form only after the employer has made its decision to shortlist you (or not to shortlist you) for interview.

**What if the application form asks whether I am in receipt of an ill-health retirement pension?**

This is likely to be a pre-employment health enquiry within the meaning of the Equality Act and, therefore, prohibited. However, it may be capable of justification in the light of the Health Standards Regulations. These regulations expressly provide that a teacher in receipt of an ill-health pension is not to be regarded as having the health and physical capacity to teach. There is an exception in relation to teachers who took up ill-health retirement benefits before 1 April 1997. Such teachers may be appointed on a part-time basis (ie 0.5 fte or less), provided that they have the necessary health and physical capacity to teach. If an application form asks you whether you are in receipt of an ill-health retirement pension, but does not ask whether you took retirement before 1997, contact the union.

**What if I am asked to obtain references early on in the recruitment process?**

The practice by some employers of seeking references (including capability-related information) early on in the recruitment process may require amendment to ensure that your health information is not disclosed to a prospective employer prior to your appointment. The NEU has advised its head teacher members not to disclose details of proceedings relating to incapability on grounds of ill health in references until the teacher's appointment to the post in question has been confirmed. It has also advised prospective employers to request capability information relating only to the successful job applicant and not to everyone who applies for a job. Contact the union if you become aware that your health condition was disclosed in references to a prospective employer before the successful applicant was appointed.

**Should my fitness be assessed even if I am applying for a job with my existing employer?**

Yes, it may, particularly if it has been several years since you were last required to complete a health questionnaire and changes in health status relevant to fitness to teach have occurred without the knowledge of your existing employer.

**How should an employer assess my fitness to teach?**

Your existing or prospective employer should follow the steps outlined below:

- You should be issued with a pre-employment health questionnaire after you have received a provisional offer of appointment.
- Your completed questionnaire should be returned direct to your existing or prospective employer's medical/occupational health adviser for assessment.
- If further medical evidence is required or a specialist appointment is necessary, this should be discussed with you.
- The medical adviser should consider whether any reasonable adjustments need to be made. If this is the case then the medical adviser should advise your existing/prospective employer.
- The medical adviser should provide a recommendation as to whether you are fit to teach. They should provide your employer with a full explanation along with their recommendation.
- The final decision about appointment rests with your employer, taking account of their duty under the Equality Act to make reasonable adjustments.

### **What about employment agencies?**

Schools and colleges are advised in DfE guidance to "seek evidence that the agency has checked the teachers' medical fitness". The NEU Fitness to Teach guidance document recommends that the following procedure should be followed when a teacher registers with an agency:

- The teacher should be required to complete a health questionnaire which should be forwarded direct to the agency's medical adviser for review.
- The agency's medical adviser should, with the individual's written consent, request the individual occupational health record from the previous employer.

### **When should an employment agency ask me to complete a pre-employment health questionnaire?**

Agencies are prohibited by the Equality Act from making pre-employment health enquiries prior to registering a teacher or teaching assistant, but are permitted to ask health questions once a teacher or teaching assistant is "included in a pool of successful candidates to be offered a job when a suitable position arises". There is likely to be a conflict, therefore, between the requirements of the Equality Act and agencies which make the receipt of satisfactory health questionnaires, or any other documents containing health information, a condition of registration. Contact the union if an employment agency asks you to complete a health questionnaire prior to registration.

### **What should I do if I am asked about my health during an interview?**

The NEU takes the view that any enquiries about a person's health at interview should be challenged, particularly in relation to people whose medical history is known to the employer or to people with visible disabilities. If you are asked about your health at interview, it is for you to decide whether it would be in your interests to reply or refuse to reply. You should, in any event, notify the union so that the matter may be raised with the employer separately.

### **What if I am asked to take a test or give a presentation as part of the interview process?**

If you are asked to undertake a test or give a presentation as part of the interview process, you should ideally be notified of this in advance and offered an opportunity to ask for reasonable adjustments to be made (eg if you are dyslexic, you may require words to be typed in a certain font or on coloured paper). The union believes teachers and teaching assistants shortlisted for interview should be asked in a letter inviting them

to interview if they require any adjustments to be made to premises or any special equipment or arrangements to be made for the interview.

**Can my employer refer me to occupational health?**

Yes, your employer or prospective employer may refer you to occupational health once you have been appointed. Currently, there is nothing in law to prevent employers from referring successful applicants to occupational health as a matter of course although you should not, as a matter of good practice, be referred for medical assessment unless there is a good reason to do so (eg your completed pre-employment health questionnaire indicates that further health enquiries should be made).

**What should I do next?**

If further advice is needed, contact your NEU workplace rep in the first instance. If there is no NEU rep in your workplace, or the peripatetic nature of your employment makes contact with a workplace rep difficult, contact the NEU Adviceline in England on 0345 811 8111 or NEU Cymru in Wales on 029 2046 5000. Further contact details may be found at: [neu.org.uk/contact-us](http://neu.org.uk/contact-us)