Hidden impairments, the Equality Act and occupational physicians

There is now a strong evidence base for the benefits of employment for people with both physical and mental health conditions and for disabled people [1]. Indeed, employment is recognized as having a central role in our society and in the lives of most people. For disabled people, employment also has a role in changing the way they are viewed in our society. This is especially true for those who have mental health conditions and hidden impairments meaning conditions identified by experts but which are not always visible to the public and which may not attract a diagnosis but which contribute to social difficulties.

Mental ill-health is extremely important since it accounts for ~13% of all lost years of healthy life globally, rising to 23% in high-income countries [2,3]. From a UK perspective, wider annual costs to the national economy in terms of welfare benefits and lost productivity at work have been estimated to amount to ~£30–40 billion [4]. The Sainsbury Centre for Mental Health has calculated that if there was better mental health support in the workplace, then UK businesses could save up to £8 billion a year [5]. The situation regarding the huge cost and impact of mental health conditions is not likely to improve, at least not in the short term. Mental ill-health remains a significant cause of long-term absence from work and is the commonest condition for which individuals are awarded employment support allowance, the successor to incapacity benefit. Also of concern is that in 2009, one review reported that only
an estimated 10–16% of people with a mental health problem (excluding depression) were in paid employment of >16 h/week [6].

While most research reports, including those mentioned above, looked at the impact of well-recognized relapsing and remitting mental health conditions such as anxiety and depression, relatively little attention has been paid to conditions which are neurodevelopmental in nature and which can range across a spectrum of severity.

As far as occupational physicians are concerned, this lack of attention is likely to come to an abrupt end now that the Equality Act 2010 [7] has become law. This Act replaces >100 separate Acts of Parliament and statutory instruments and >2500 pages of codes of practice and guidance. It aims to address the different inequalities faced by people today compared to those faced even 10 years ago as well as to address the concerns both of people with mental health problems and also of people with ‘hidden impairments’. The Equality Act builds upon requirements already in force through the first ever disability-specific law, the Autism Act 2009 [8].

Employment protection is provided under the Equality Act 2010 for people with conditions such as Asperger’s syndrome and autistic spectrum disorders through a focus on the effects of impairments and not on the existence of a diagnosis. This is achieved by removing the need for the impairment to affect one of the specific criteria of daily living such as mobility, continence etc. which were previously a pre-requisite under the Disability Discrimination Act.

One specific new area covered by the Equality Act relates to employers (or their agents) and the asking of health questions prior to an offer of employment. Questions can now only be asked if they are about intrinsic requirements of the job or after the offer of employment has been made. If the employer asks health-related questions prior to job offer, then the onus falls on them, if challenged, to prove that the health condition was not the reason for subsequent lack of success in getting the job. The impact of this is that while there will still be people who keep their impairments hidden, it is likely that increasing numbers of individuals will disclose their condition after job offer and the employer will then seek advice from an occupational physician on their fitness for work.

There can be few occupational physicians who have not already provided advice on workability to an employer with regards to someone with a neurodevelopmental disorder. Although the prevalence rates vary according to classification criteria and definitions, the rates most commonly reported for autistic spectrum disorders are 0.02% [9]; ~3% for dyslexia [10], dyscalculia [11] and adult attention deficit hyperactivity disorder (ADHD) [12] and 6% for dyspraxia [13]. By any account, these rates are significant and with better awareness by professionals, more and more people are being identified, diagnosed, supported through their education and are reaching adulthood and seeking work.

With new legislation and the rising number of people being diagnosed with neurodevelopmental conditions, at a grass roots level, occupational physicians will need to be better educated, trained and aware of the impact on function of these conditions and of the behavioural and cognitive challenges workers face. An awareness of specific abilities associated with specific conditions, for example the perfectionism of people with Aspergers and the creativity and energy of the adults with ADHD, can lead to the types of jobs at which they may excel and those which they may find challenging. People with Aspergers, for example, often find that jobs with a well-defined goal or end point and which do not involve frequent interaction with ever changing groups of people are suitable. In contrast, people with autism are more likely to be successful in jobs which are ever changing, which involve frequent moving around and activity and do not have demanding short-term memory requirements. Probably more essential for both employer and occupational physician though is an appreciation of how work can be designed and organized to enable people with neurodevelopmental disorders to obtain and retain suitable employment and to realize the benefits of work.

Occupational physicians will need to be aware both of the functional impact of hidden impairments but also what help is available to support people. One avenue is Access to Work which is a specialist disability service delivered by Jobcentre Plus, which provides practical advice and support to disabled people and their employers to help them overcome work-related obstacles resulting from disability. Access to Work funds the support to enable employers to make adjustments that would be considered reasonable by an Employment Tribunal. Support is tailored to individual needs, following assessment by the Access to Work Adviser and, if appropriate, by a contracted specialist third-party assessor. Eligibility criteria apply and further information can be obtained by contacting http://www.dwp.gov.uk/adviser.

M. Adamou
South West Yorkshire Partnership NHS Trust, Wakefield, UK

A. Wadsworth
Jobcentre Plus Disability Service Development Team, Wilmslow, UK

M. Tullett
Jobcentre Plus, Wilmslow, UK

N. Williams
Department for Work and Pensions, London, UK
e-mail: nerys.williams2@dwp.gsi.gov.uk

References