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## Risk control

Dementia Awareness for  
Managers of Drivers



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# Dementia Awareness for Managers of Drivers

## Introduction

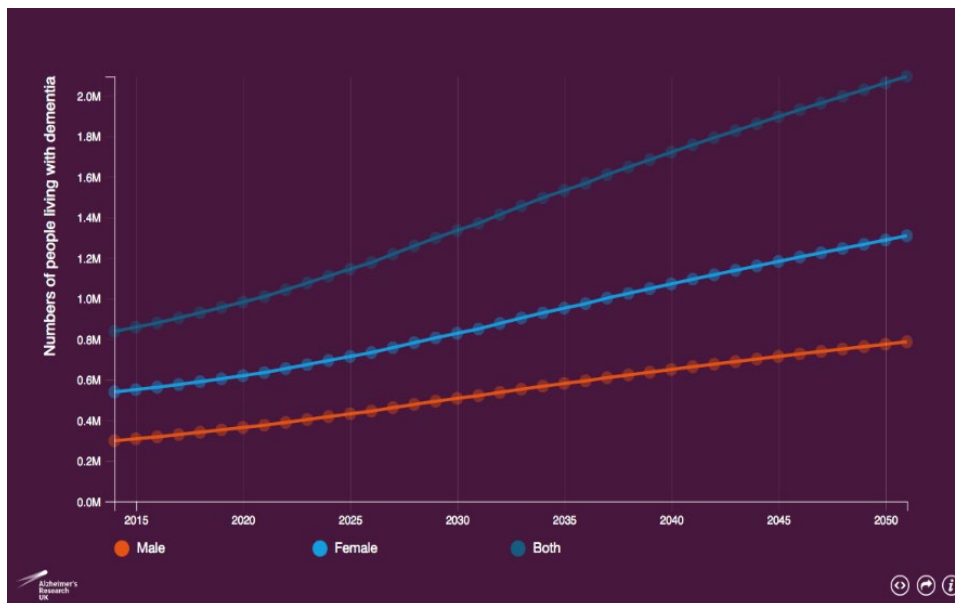
Dementia is the umbrella term for a group of illnesses that cause damage to the brain and its functions; including thinking, memory and communication. The dementia group of diseases are:

- Alzheimer's disease
- Vascular dementia
- Dementia with Lewy bodies
- Frontotemporal dementia

The World Health Organisation estimates that up to 50 million people worldwide<sup>1</sup> have dementia with approximately 850,000 UK sufferers, with one in 14 persons over the age of 65 and 1 in 79 of the total UK population being affected<sup>2</sup>. The number is expected to grow rapidly over the several decades. As age is the biggest risk factor for dementia, increase in life expectancy is the principle driving force behind this projected rise<sup>3</sup>.

## The Current Situation

With the increasing age of the population, the proportion of older drivers on the road is also rising. Given that age is the most significant risk factor for developing dementia, it is apparent that large numbers of licensed drivers have or are likely to develop dementia. Studies have shown that the driver with dementia is at increased risk to cause traffic accidents<sup>4</sup>. Friedland and co-workers found a 47% prevalence rate of crashes among 30 persons with Alzheimer's disease (AD) compared to 10% of 20 age-matched controls in a retrospective survey over 5 years<sup>5</sup>.



Source: Prince, M et al (2014) Dementia UK: Update Second Edition report produced by King's College London and the London School of Economics for the Alzheimer's Society<sup>6</sup>

1 <https://www.who.int/news-room/fact-sheets/detail/dementia>

2 <https://www.alzheimersresearchuk.org/>

3 [https://www.alzheimers.org.uk/sites/default/files/migrate/downloads/driving\\_and\\_dementia\\_factsheet\\_439.pdf](https://www.alzheimers.org.uk/sites/default/files/migrate/downloads/driving_and_dementia_factsheet_439.pdf)

4 Driving in Alzheimer's disease Dubinsky RM, Williamson A, Gray CS, et al.

5 Driving and dementia: A review of Literature, J Geriatr Psychiatry Neurol. 2004 December; 17(4): 232–240. doi:10.1177/0891988704269825

6 Dementia UK: Update Prince, M et al (2014)

Along with this increase in the age of the population more workers are choosing to remain or having to remain in the workplace for longer. It is now not unusual to discover workers around you who could legitimately collect their state pensions. With barriers to working later in life being removed it is not unusual for people to be working well beyond the traditional norm. For many organisations this allows them to retain good workers and a wealth of experience so can be a positive aspect for both parties.

It is therefore essential that managers recognise that they have rapidly growing risk that some of their drivers may have or develop dementia. For the reasons mentioned above there may be economic reasons for them not to willingly reveal that they have been diagnosed or may even have ignored symptoms as a means of not accepting that they have the disease.

## Drivers and Dementia

More and more organisations are reliant upon a more mature workforce to deliver ongoing services, and non-have such a heightened risk as fleet operations. With many organisations struggling to attract younger drivers it is not surprising that drivers are provided with incentives to remain at work and for some it is essential due to financial circumstances. What remains clear is that organisations and in particular managers who have responsibility for drivers need to ensure that they recognise signs or listen to colleagues who may express concerns about drivers and deliver expeditious interventions. There are some 100 types of dementia. Memory loss is a symptom common in early stages however other symptoms are also prevalent such as changes in behaviour. Some common signs to be aware of can include;

- Difficulty in remembering names or events
- Struggling to find the correct words
- Some also find it hard to complete financial tasks
- Bouts of confusion
- Regular mood or personality changes
- Loss of attention
- Special awareness problems (particular issue for drivers)
- Tremors, spasms or muscle stiffness
- Loss of personal hygiene

This is not exhaustive and it is important to say that the type of dementia can dictate the type of symptoms being exhibited. It is also important to state that there may also be legitimate natural reasons for these symptoms as well<sup>7</sup>.

Diagnosis for dementia is a slow process taking some months with many tests to eliminate other possible issues.

## Legal Protection

Dementia sufferers are protected in law. The principle legislation is the Equality Act 2010<sup>7</sup>. This act sets out nine protected characteristics. Discriminating against an employee on the basis of one of these characteristics is unlawful. Disability is a protected characteristic. It is defined as a physical or mental impairment which has a substantial or long term adverse effect on someone's ability to carry out normal day to day activities. 'Substantial or long term' means has lasted at least 12 months is expected to last at least 12 months or is going to last for the rest of the natural life of the person concerned, therefore dementia fits into this definition)

If found guilty of an offence contrary to the Equality Act the level of compensation can be unlimited. The Act also protects against discrimination that takes place because of who someone thinks you are, or because of someone you're associated with. So, for example, unfair discrimination against an employee because they are caring for someone with dementia will be unlawful.

Protection from discrimination extends to agency workers, casual workers, zero hours workers and, in some situations, self-employed workers. It doesn't depend on the existence of a written contract. It applies so long as someone has agreed to personally do work for an employer in exchange for pay. Where one worker is discriminatory toward another because of a disability, the employer can be liable under the Act.

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<sup>7</sup> UK Gov. Legislation – Equality Act 2010 - <http://www.legislation.gov.uk/ukpga/2010/15/contents>

The Equality Act 2010 defines 4 types of discrimination:

- DIRECT: Treating someone less favourably than they would another because they possess one of the protected characteristics. This is normally a day to day interaction/conversation that we have that is discriminatory.
- INDIRECT: this is where someone applies a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic. For provision criterion or practice read policies and procedures of an organisation. They must not be discriminatory.
- BY ASSOCIATION: this is where someone is treated less favourably because they are linked or associated with someone who has a protected characteristic. So this is where discrimination occurs against someone because they are linked or associated to someone who possess one of the 9 protected characteristics.
- BY PERCEPTION: this is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not possess that characteristic.

#### THE EQUALITY ACT 2010 CREATES ADDITIONAL MATTERS IN RELATION TO HARASSMENT:

A person harasses another if they engage in unwanted conduct related to a relevant protected characteristic AND the conduct has the purpose or effect of (1) violating someone's dignity OR (2) creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. Further they also harass an individual if they engage in unwanted conduct of a sexual nature and the conduct has the purpose or effect of :- (1) violating someone's dignity OR (2) creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Further a person is also harassed if they or another engage in unwanted conduct of a sexual nature or that it is related to gender re-assignment or sex and the conduct has the purpose or effect of :- (1) violating someone's dignity OR (2) creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual, and because of someone's rejection of/or submission to the conduct they are treated less favourably than they would treat the individual had they not rejected or submitted to the conduct.

KEY NOTE: - In deciding whether the conduct has (1) violating someone's dignity OR (2) creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. Each of the following must be taken into account (a) the perception of the individual (b) the other circumstances of the case (c) whether it is reasonable for the conduct to have that effect.

VICTIMISATION: A person victimises another if they subject them to a detriment because: - (a) they have done a protected act or (b) they believe that they have done or may do a protected act. Each of the following is a 'protected act':

- 1 Bringing proceedings under this act
- 2 Giving evidence or information in connection with proceedings under this act.
- 3 Doing any other thing for the purpose of or in connection with this Act
- 4 Making an allegation that that person or another person has contravened this Act.

The act also requires organisations to make what are termed 'reasonable adjustments' for an employee with dementia. It is important to ensure that you take proper professional advice as to what extent these adjustments should be as it will depend on the size and resources of the organisation. It must also be noted that any costs cannot be passed to the employee although there are grant facilities available through such services as Access to Work<sup>3</sup>.

Reasonable adjustments falls into three categories: the first requirement is where a provision, criterion or practice puts a disabled person at a substantial disadvantage in comparison to a person who is not disabled, to take such steps as is reasonable to have to take to avoid the disadvantage.

The second requirement is where a physical feature puts a disabled person at a substantial disadvantage in comparison to a person who is not disabled, to take such steps as is reasonable to have to take to avoid the disadvantage

The third requirement is where a disabled person would but for the provision of an auxiliary aid be put at a substantial disadvantage in comparison with persons who are not disabled to take such steps as is reasonable to have to take to provide the auxiliary aid<sup>3</sup>.

It is vitally important that professionally trained HR representatives support managers who identify a worker, particularly one who is employed as a driver, who may have dementia. Meetings with such employees need to be well prepared and managed.

## Driving and Dementia - The Legal Position

Where a person is diagnosed with dementia and wishes to continue driving then they MUST inform the Driver and Vehicle Licensing Authority (DVLA) if within Great Britain or the Driver and Vehicle Agency (DVA) if in Northern Ireland<sup>8</sup>. It is also essential that they notify their own insurers or the insurer can invalidate the insurance.

- Notification to the DVLA/DVA will generally lead to a course of action that includes:
- Contact with the relevant doctor or consultant
- Arrange for an examination
- Ask for the person to take a driving assessment, or an eyesight test

In many cases the driver can remain driving whilst the process is completed. More information is available from the DVLA with its online leaflet INF188/6<sup>8</sup>. This document provides relevant information for both driver and doctor to make appropriate decisions<sup>9</sup>. It can also assist managers/HR and occupational health professionals who may be assessing the driving risk of the relevant person. One of the most critical aspects for the management of this risk is communication. Ensure that proper, professional dialogue with the person takes place. That the communications are honest and timely. Many managers fail to properly manage these situations due to delay, not knowing how to discuss it or just turning a blind eye.

It is essential that organisations include, within their driving policy, the requirement for revelation of any medical issue that may affect their driving and then keep them updated regarding any health issues. Where this is not included then it must be contained within contracts of employment and be brought to the attention of employees regularly to ensure that it retains a high profile. It is essential that organisational HR and welfare teams are involved in any subsequent support or action. Managers must be involved in or kept fully up to date regrading risk assessments as they are responsible for the management of the person and delivering dynamic risk assessments.

Where it is known that a driver has had such a diagnosis yet refuses to notify DVLA/DVA then there remain issues as to who can notify. Organisations and other private persons are unable to notify due to the medical sensitivities. As a last resort the drivers GP can inform DVLA/DVA without the patient's permission. This is subject to agreed protocols with the General Medical Council<sup>8</sup>.

What is essential for the line manager is to ensure that there is an open communication with the driver and that they are not afraid to discuss what they are seeing. Managers are required, under legislation, to manage the driving risk and as stated above research identifies that dementia sufferers are a higher risk in some areas than non-dementia sufferers.

What options are available to you, the manager, will depend upon your organisations facilities and flexibility. Where reasonable adjustments are not possible then there may not be any option however this should be seen as a last resort for employers and the decision must be taken with professional Human Resource, Occupational Health and legal guidance.

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<sup>8</sup> <https://www.gov.uk/government/publications/inf1886-can-i-drive-while-my-application-is-with-dvla>

<sup>9</sup> UK. Gov. DVLA Guidance - <https://www.gov.uk/alzheimers-disease-and-driving>

## References

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- 9 UK. Gov. DVLA Guidance - <https://www.gov.uk/alzheimers-disease-and-driving>

## Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

## Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

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