



Mental Health and Physical Activity Toolkit

Guide 8:

Legal considerations around delivering physical activities for people experiencing mental health problems





About this guide

We've produced this guide to upskill sport, physical activity and mental health providers on the legal considerations required when delivering sport and physical activities to people experiencing mental health problems.

Who is this guide for?

Anyone working or volunteering in sport, physical activity and/or mental health.

What does this guide cover?

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The Equality Act and mental health

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The Equality Act and mental health

Everyone has the right to equal access to services and support. The [Equality Act 2010](#) is the law that gives people the right to challenge unequal access and discrimination.

A person is protected under the Equality Act if they can show that they have been treated unfairly because of one or more of the following protected characteristics:

- Age
- Disability (including long-term health conditions and mental health problems)
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

This guide is about mental health. But the [Equality and Human Rights Commission](#) has specific guidance for gyms, health clubs and sporting activity providers that covers other equality issues.

A mental health problem can be classified as a disability if:

- it's long-term (lasts more than 12 months, or is likely to)
- has an adverse effect on the person's ability to carry out normal day-to-day activities (like getting up in the morning or planning a journey to work).

Not everyone who experiences a mental health problem and meets this criteria will see themselves as disabled. However, they're still protected under the Equality Act 2010.

People experiencing mental health problems who receive treatment for their condition (like medication or therapy) are still classified as disabled under the Act if, without this treatment they would struggle to carry out normal day-to-day activities.

If someone doesn't currently experience a mental health problem, they are still protected under the Act if they have previously.

Case study

Vanessa

Vanessa has experienced depression for the past few years. It's affecting her ability to perform day-to-day activities and she is struggling to get out of bed, take care of her personal hygiene and leave the house to see friends and family. She's currently not receiving any treatment for her depression. In this situation, it would be reasonable to assume that Vanessa's condition counts as a disability.

Even if Vanessa had treatment that allowed her to perform day-to-day activities, she would still be considered as likely having a disability under the Equality Act. That's because without treatment her mental health problem is likely to have an adverse effect on her ability to carry out day-to-day activities.



Discrimination under the Equality Act

There are many situations in which a person may feel like they are being treated unfairly because of their disability. The Equality Act is specific on the types of discrimination it covers.

Type of discrimination	Description	Example(s)
Direct discrimination	Treating someone less favourably because of a disability.	Restricting a group or person's use of facilities at certain times because of their mental health problem. Rejecting a person's application to join a club or activity on the grounds of their mental health problem.
Discrimination arising from disability	Treating someone unfavourably because of something connected with a disability, rather than the disability itself.	A leisure centre dismisses a trainer who has been absent from work with anxiety, which they have had for several years. The leisure centre is not dismissing the trainer because of their disability, but because of their absence. However, the absence arises due to their disability and this is classed as discrimination unless the centre can justify it.
Indirect discrimination	Applying a policy or condition that adversely impacts a protected group (like disabled people).	Organising a team selection session at 7am on a Saturday when you know that a person's medication makes them feel lethargic first thing in the morning. Unless it can be justified, this is considered indirect discrimination.
Harassment	Creating a hostile or degrading atmosphere because of someone's disability.	A member of leisure centre staff imitates the behaviour of a person experiencing mental health problems and makes fun of them on the basis of their mental health.
Victimisation	Treating someone unfavourably because they have made or supported a complaint of discrimination.	Refusing to put a player forward to be captain because they supported a team mate's complaint about the club not supporting their mental health problem.

For both indirect discrimination and discrimination arising from disability, it's possible for a body or employer to legally justify behaviour that would otherwise be considered discrimination. To do this they must show that their action was a "proportionate means of achieving a legitimate aim".

The Equality Act doesn't define what this means. So it's best to consider the 'legitimate aim' first, and then the 'proportionate means'.

Legitimate aim

Think about these points:

- What is the reason for the rule, policy or behaviour?
- Is that reason genuine and valid?
- Does the organisation have a real need for the rule, policy or action?

Organisations may have various legitimate aims including:

- ensuring the health and safety of members
- helping the efficient running of the organisation
- ensuring the efficient use of resources.

Proportionate means

Think about these points:

- Is the rule or policy reasonably necessary to achieve the legitimate aim?
- Has the organisation considered how the rule, policy or action might affect disabled people?
- Has the organisation balanced its own needs against the impact its rule, policy or action might have on disabled people?
- Is there a way of achieving the organisation's aims in a way that causes less of a disadvantage to disabled people?

Case study

Leisure centre

A leisure centre has a rule that if anyone wants to cancel a pre-booked class they must telephone at least 24 hours before, so they're not charged. The centre used to let people cancel by email. But sometimes these emails wouldn't be read before the class started.

Many people experiencing mental health problems find telephone conversations difficult. So this rule has the potential to disadvantage them.

Is this approach justified? The leisure centre needs to think about the rule's legitimate aim and proportionate means.

Legitimate aim: the leisure centre has introduced this rule to ensure it runs services efficiently. This is a genuine and valid reason, so would be classed as a legitimate aim.

Proportionate means: the leisure centre doesn't reasonably need the rule to run its services smoothly. The centre hasn't considered how the new rule might affect people experiencing mental health problems, it has only considered its own needs. Setting up a text messaging service, or managing its email system better, would achieve the centre's aims in a way that causes less disadvantage to people experiencing mental health problems.

Result: the aim of the rule is 'legitimate', but the means used to achieve the aim were not 'proportionate' and so it is not justified.





The Equality Act and physical activity

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The Equality Act and physical activity

All organisations and people that provide a service to the public (for a payment or for free) must adhere to the Equality Act.

Associations, such as private clubs, also need to comply with the Equality Act even if they're not a service provider. An association is any group of 25 or more members, which has rules to control how someone becomes a member, involving a genuine selection process¹. These rules may be written (in a constitution, for example) or unwritten.

This covers a large number of sport and physical activity providers including governing bodies, charities, leisure centres and public and private clubs. Many of these providers also fall under the Equality Act as an employer.

See our website for more information on the [steps employers can take](#) to avoid mental health discrimination in the workplace.

¹ Equality and Human Rights Commission. [Does equality law apply to the organisation I belong to or want to join or be a guest of?](#)



Case study

John

John has recently joined a cricket club and would like to coach the under-11s side. He's been diagnosed with schizophrenia, is on anti-psychotic medication and has previously stayed in hospital under the Mental Health Act.

After John shares his diagnosis, the club captain refuses his request, claiming “it’s just not worth the risk.”

The club now needs to consider the following issues:

- Under the Equality Act, John is classed as a disabled person if his condition, without treatment (his anti-psychotic medication), has an adverse effect on his ability to perform day-to-day activities.
- If his condition does not currently satisfy the definition of disability, it is still possible for John to be discriminated against on the basis of a past disability.
- It may be that the club are treating John less favourably and so directly discriminating against him. They are acting on the stereotype that people with schizophrenia are dangerous. Direct discrimination can never be justified.

The club argue that John is being treated this way due to something arising because of his disability. They can justify this if it is a proportionate means of achieving a legitimate aim.

Legitimate aim: the club say their legitimate aim is safeguarding children at the club. There is a legitimate need for the club to ensure the health and safety of their members.

Proportionate means: the club argue that refusing John permission to coach the under-11s side is a proportionate means of achieving this aim. However, the club did not carry out a proper risk assessment and the club captain simply made a decision on the assumption that someone with John’s diagnosis presented a risk to children. As a result, denying John permission to coach the side is not reasonably necessary to achieve the legitimate aim. Also, the club have not considered other ways of achieving the aim that causes less of a disadvantage to John.

Result: the aim of the rule is ‘legitimate’, but the means used to achieve the aim were not ‘proportionate’ and so it is not justified. If the club conducted a risk assessment and identified concerns, then a less drastic way to meet their legitimate aim would be to allow John to coach alongside another coach or club member.



Case study

Facing discrimination

To coach children, John, like everyone else, will need to complete a Disclosure and Barring Service (DBS) check. The DBS check will show if John has any criminal convictions or any other information the police see as relevant.

In some circumstances, the police can disclose information relating to the person's mental health. For more information please see [our guide to DBS checks and your mental health](#).

One of John's team members becomes aware of John's diagnosis and gives him the nickname "Psycho". John finds this upsetting and complains to the club secretary who doesn't take any action.

This behaviour is unacceptable. But legally the team member is not liable, as the Equality Act doesn't have duties for individual club members. However, the club, as an association or service provider, could be found liable for harassment if they do not take action for a situation they have some degree of control over.

A few months later, John becomes unwell. During a junior coaching session, he confronts a group of parents who have been making false allegations against him. A complaint is made to the club's General Committee about John confronting parents and he is invited to a disciplinary hearing. The hearing proceeds even though John can't attend due to being unwell. The hearing expels him from the club.

Most clubs have a code of conduct or standards of behaviour they expect all members to comply with. It is the club's duty to make [reasonable adjustments](#) to remove barriers disabled people may face and avoid discrimination arising from their disability. In this case, it may be a reasonable adjustment to postpone the hearing to give John an opportunity to attend, or to allow him to send in a written response to the allegation.

His expulsion from the club may also fall under "discrimination arising from disability" as the confrontation arose from John's disability. The club would not be able to justify the expulsion if they could have made a reasonable adjustment.





Making reasonable adjustments

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Making reasonable adjustments

What are reasonable adjustments?

Reasonable adjustments are changes organisations and people providing services or public functions have to make if a person's disability puts them at a disadvantage compared with others who are not disabled.

It's always best practice to carry out risk assessments and take specialist advice to ensure your policies and procedures do not have an adverse effect on the health of your employees, service users and members.

Examples of reasonable adjustments

- Reduced rates or concessions for people on benefits due to their health needs.
- Offering sessions that take into account the barriers people experiencing mental health problems may face (see [Guide 4: Making physical activities inclusive to people experiencing mental health problems](#)). For example, sessions starting later in the morning, smaller groups or mental health training for the coach.
- Staff offering to meet participants outside the facility (like in the car park) to help overcome their anxiety of walking in alone.
- Providing images or a video tour of the facilities, staff and sessions to reduce the anxiety people may have when starting a new activity.
- Allowing people to bring support workers or a buddy to sessions if required.
- Providing time before or after the session for people to ask questions or speak to the coach.
- Freezing annual membership for people experiencing periods of ill health.

How to make reasonable adjustments

Organisations have an ‘anticipatory duty’ to make [reasonable adjustments](#). This means planning in advance what you need to do to make your services accessible to disabled people instead of waiting for people to ask for the adjustments.

To anticipate the adjustments required, it is best to involve people with lived experience of mental health problems when designing your services. This will highlight the adjustments needed and the organisations that could support your service.

For more information, please see [Guide 3: Involving people with lived experience of mental health problems in the design and delivery of your work](#).

Taking ‘positive action’

It’s useful to review your policies and practices to see how they might present barriers and then consider what steps you might need to take to minimise or remove them.

A physical activity provider or association can take what’s known as ‘positive action’ to encourage people with a [protected characteristic](#) to engage with them. It applies to people who share a protected characteristic and:

- suffer a disadvantage connected to the characteristic
- have needs that are different from the needs of people who do not share the characteristic
- take part in an activity where their representation is disproportionately low.

An example of positive action could be running taster sessions supported by a local Mind to encourage people with mental health problems to try out an activity.



Where can I find extra guidance?

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Where can I find extra guidance?

[Our Legal line](#) provides legal information and general advice on mental health-related law including:

- being detained under the Mental Health Act (sectioning)
- mental capacity
- community care
- discrimination and equality related to mental health problems.

The helpline is available on 0300 466 6463 9am to 6pm, Monday to Friday (except bank holidays).

You can also find more information and guidance on our [legal rights](#) webpages.





Have a question or would like more information?

You can find more information at [mind.org.uk](https://www.mind.org.uk).
Or why not take a look at the other guides in our
[Mental Health and Physical Activity Toolkit](#).

If you have any further questions, please contact
our Physical Activity team at sport@mind.org.uk.

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Mind, 15-19 Broadway, Stratford, London E15 4BQ

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