

Guide 3: Sport, mental health and the law – what do I need to know?

Sport and physical activity for people with
mental health problems: a toolkit for the sports
sector



Guide 3: Sport, mental health and the law - what do I need to know?

This guide covers:

- The Equality Act and how it relates to mental health.
- How you can use the Equality Act to better support people with mental health problems.
- Information about the reasonable adjustments you can make.

Mental health and the Equality Act 2010

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 discrimination. An individual is protected under the Equality Act if they can show that they have been treated badly because of one or more of the following protected characteristics:

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

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

- It is long-term, i.e. lasts more than 12 months, or is likely to do so.
- It has an adverse effect on the individual's ability to carry out normal day-to-day activities, e.g. the ability to get up in the morning or plan a journey to work.

When assessing if a person can be defined as having a disability under the Act, it is important to note that the assessment must take into account how the person's mental health problem could affect their day-to-day life if they were not receiving treatment. The focus is on the effect of the mental health problem, rather than the diagnosis. If a person does not currently have a mental health problem, they are still protected from discrimination if they have previously had a disability (as defined by the Equality Act) in the past.

Example – Anne

Anne has recently experienced a bout of depression which is affecting her ability to perform day-to-day activities. She is struggling to get out of bed, take care of her personal hygiene and leave the house to see friends and family. She is not receiving treatment. In this instance, it would be reasonable to assume that Anne's condition amounts to a disability.

However, if Anne was receiving treatment and was able to perform day-to-day activities then she might still be considered to be living with a disability 'but for' the treatment she is receiving. Without the treatment, her mental health condition would in all likelihood have had a substantial adverse effect on her day to day activities, and therefore be defined as a disability.

Discrimination under the Equality Act

There are many situations in which an individual may feel like they are being treated unfairly because of their disability. However, the Equality Act is specific in the types of discrimination it covers.

Type of discrimination	Description	Example
Direct discrimination	Treating someone less favourably because of a disability.	Restricting a group or individual's use of your facilities at certain times because of their mental health problem. Rejecting a person's application to join a sports club 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 for 3 weeks with a recurrence of a longstanding depressive condition. The leisure centre is not dismissing the trainer because of their disability, but because of the absence. However, the absence arises in consequence of the disability and will be discrimination unless the centre can justify it.
Indirect discrimination	Applying a policy or condition which adversely impacts a protected group – e.g. disabled people.	Organising a team selection session at 7am on a Saturday morning when you are aware that an individual's medication makes them feel lethargic first thing in the morning.

Type of discrimination	Description	Example
Harassment	Creating a hostile or degrading atmosphere because of someone's disability.	A member of leisure centre staff imitates the behaviour of an individual with 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 for a captaincy because they have supported a team-mate's complaint over their mental health problem.

It is important to note that in the two types of discrimination (indirect and discrimination arising from disability) it is 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 does not define what this means, and so when considering a situation that may result in potential discrimination under the Equality Act it is sometimes useful to take it in two stages and to consider various questions. It is often easier to consider the 'legitimate aim' first, and then move on to the 'proportionate means':

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

There are all sorts of things organisations might have as legitimate aims. For example:

- Ensuring the health and safety of members
 - Helping the efficient running of the organisation
 - Ensuring the efficient use of resources.
- Proportionate means
 - Is the rule or policy reasonably necessary to achieve the legitimate aim?
 - Has the organisation considered how the rule or policy or the action might affect people with disabilities?
 - Has the organisation balanced its own needs against the impact that its rule or policy or action might have on people with disabilities?
 - Is there a way of achieving the organisation's aims in a way that causes less of a disadvantage to people with disabilities?

Example

A leisure centre has a rule that if anyone wishes to cancel a pre-booked class in the gym then they must telephone reception at least 24 hours before the class in order not to be charged for it. The centre used to allow people to cancel by email, but sometimes there was a backlog of emails and so cancellations were not processed in time for classes. The centre therefore imposed the rule that cancellation could only be made by telephone and not email. Many people with mental health problems find telephone conversations difficult for a variety of reasons. This rule therefore has the potential to disadvantage people with disabilities.

Legitimate aim: the leisure centre has introduced this rule with the aim of ensuring that it ran its services efficiently. This is a genuine and valid reason and the centre has a real need to ensure its services are run efficiently.

Proportionate means: the leisure centre does not reasonably need the rule in order to make sure its services are run smoothly. It hasn't considered how the policy might affect those with mental health problems and has really only considered its own needs. Setting up a text messaging facility, or proper management of its email system would achieve the centre's aims without causing difficulties to people with mental health problems. The aim of the rule is 'legitimate', but the means used to achieve the aim were not 'proportionate' and so the rule is not justified.

Which organisations need to adhere to the Equality Act and in what ways?

All organisations or individuals that provide a service to the public, or a section of the public, must adhere to the Equality Act. The Equality Act defines a service provider as an organisation or person that provides services to the public, or a section of the public, for payment or for free. This definition covers a large number of community sports bodies, including gyms and leisure centres. Some sports bodies can also be considered as associations under the Equality Act if they have:

- 25 members or more.
- Rules for admission (not necessarily formal or written), and a genuine selection process for prospective members that is not solely determined by whether a person pays a fee to join that organisation.

Examples of associations include private clubs such as golf and other sports clubs.

A sports body can also fall under the Equality Act as an employer. More information about the steps employers can take to avoid mental health discrimination in the workplace can be found on [Mind's website](#).

The public sector equality duty (PSED) is a special duty that most public authorities (such as government departments, local authorities, police forces and NHS hospitals) have to:

- Remove or minimise any disadvantages people may face because of their mental health problem.

- Take steps to meet the needs of people with mental health problems that are different from the needs of people who don't.
- Encourage employees with mental health problems to get involved in public life or in any other activity in which their participation is disproportionately low.

The PSED applies to any body that is run or hosted in whole, or part, by a public sector organisations. This includes local government sports development teams and local authority leisure providers, and can include County Sports Partnerships if they are hosted by their local authority.

Example case study – John

John has been diagnosed with schizophrenia and has been detained in hospital under the Mental Health Act on various occasions. He is on anti-psychotic medication, and has decided to join a cricket club.

At the club, John revealed his diagnosis and asked if he could coach the under 11s side. The club captain refused to let him coach the children, saying “it’s just not worth the risk.” The club now needs to consider the following issues

- John is a ‘disabled person’ under the Act if his condition without medication has an adverse effect on his ability to carry out 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 is directly discriminating against John (less favourable treatment because of his disability). This cannot be ‘justified’ by the club.
- It may be that the club argue that the way they are treating John is because of something arising in consequence of his disability. They can justify this if it is a proportionate means of achieving a legitimate aim. In this case the club might argue that a legitimate aim would be safeguarding children. Having identified a legitimate aim, the club would then have to show that refusing to let John coach children was a ‘proportionate means’ of achieving that aim. If the club did not carry out a proper risk assessment, and instead simply made a decision on the assumption that someone with John’s diagnosis presented a risk to children, it is difficult to see how it could argue that a ban on coaching children would be a proportionate means of achieving that aim. Also, it is almost impossible for an organisation to argue that action is proportionate if there is a less drastic way of meeting their aims. In a case such as this if the risk assessment identified issues of concern it might be more reasonable to allow John to coach alongside another club member, rather than to impose a total ban.

- If John wishes to coach children then he, like anyone else, will need to complete a Disclosure and Barring Service (DBS) check and other recruitment procedures such as application, interview and training. The DBS check will show if John has any criminal convictions or any other information that the police deem as relevant. In some circumstances the police can disclose information relating to the individual's mental health. For further information on this see Mind's [guide to working with vulnerable adults and children](#).

Later, one of John's team members became aware of John's diagnosis and gave him the nickname "Psycho", which John found upsetting. He complained to the Club secretary who did not take any action.

The Equality Act does not create duties on individual club members, and so the team member himself is not liable. However, if an association or service provider fails to take action on offensive conduct they are aware of, and where they have some degree of control over a situation, they could be found liable for harassment. Also, if an association sets standards of behaviour for their members, associates and guests which have a worse impact on people with a particular protected characteristic than on people who do not have that characteristic, this could be indirect discrimination.

If they do set standards of behaviour, they must make reasonable adjustments to the standards for disabled people and avoid discrimination arising from disability.

The reasonable adjustments you can make

Whether a person's mental health problem is or is not defined as a disability under the Equality Act it is always best practice to carry out risk assessments and take specialist advice to ensure that your policies and procedures do not have an adverse effect on the health of your employees and service users.

As a result, you may need to make **reasonable adjustments**, which are changes that organisations and people providing services or public functions have to make for an individual if their disability puts them at a disadvantage compared with others who are not disabled. Examples of good practice include:

- Concessions for people receiving benefits based on their health needs enabling them to access leisure centres and gyms at a reduced rate.
- Offering targeted sessions for people with mental health problems that take into account the barriers that may make it difficult to them to take part e.g. starting later in the morning, smaller groups, or ensuring that the coach has received mental health awareness training.
- Instructors offering to meet personal training clients in the car park to help overcome their anxiety of walking into the gym alone.

Organisations have an anticipatory duty to make reasonable adjustments, which means you must plan in advance to meet the access needs of people with disabilities.

By making reasonable adjustments, you will help to make your sessions more accessible to a wider audience and create a positive experience that will keep participants engaged. They're also a great way of helping you to gain a higher level of achievement in the [Equality Standard for Sport](#).

A good way of anticipating the adjustments you may need to make is to involve people with mental health problems and mental health service providers in the development of your service. This will help you to find out what type of support and considerations you need to make, and the types of local partnerships you will need to develop. Tips on how you might do this are included in [Delivering a sport and physical activity service: A toolkit for mental health providers](#).

It is 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 sports provider or association can also take what's known as 'Positive Action' to encourage people with a protected characteristic to engage with them. It applies to those who share a protected characteristic and:

- Suffer a disadvantage connected to the characteristic.
- Have needs that are different from the needs of persons who do not share it.
- Take part in an activity, but 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 a sport.

[Mind's website](#) has more guidance on reasonable adjustments that organisations can make.

Where can I find additional guidance?

[Mind's legal line](#) provides legal information and general advice on mental health related law covering:

- Mental health
- Mental capacity
- Community care
- Human rights and discrimination / equality related to mental health issues

You can call the helpline on 0300 456 5453 between 10am and 6pm Monday to Friday (except bank holidays).

Further information and guidance can also be found on the [legal rights](#) pages of Mind's website.

Useful contacts in the mental health sector

Rethink Mental Illness	<p>Rethink Mental Illness is a charity that runs services and support groups that change people's lives and challenge attitudes about mental health problems. They campaign for policy change and provide expert, accredited advice and information to everyone affected by mental health problems</p> <p>An A-Z of mental health factsheets can be found on the Rethink Mental Illness website here.</p> <p>Website: rethink.org</p> <p>Key contact: info@rethink.org</p>
Mental Health Foundation	<p>The Mental Health Foundation is a charity specialising in research and policy development, with a focus on preventing mental health problems.</p> <p>An A-Z on a range of mental health topics can be found on the Mental Health Foundation website here.</p> <p>Website: mentalhealth.org.uk</p> <p>Key contact: Emails are via a contact form on the website</p>
Scottish Association for Mental Health (SAMH)	<p>Scottish Association for Mental Health (SAMH) is Scotland's leading mental health charity. It provides help, information and support, and campaigns on behalf of people with mental health problems.</p> <p>SAMH provides a range of sports and physical activity programmes, and support to the sport and physical activity sector.</p> <p>Website: samh.org.uk</p> <p>Key contact: enquire@samh.org.uk</p>
Together	<p>Together is a national charity providing a range of services to meet the different needs of people with mental health problems.</p> <p>Website: together-uk.org</p> <p>Key contact: contact-us@together-uk.org</p>
Mental Health Matters	<p>National organisation delivering services for people with mental health needs and other complex issues such as learning disabilities, and drug and alcohol problems.</p> <p>Website: mentalhealthmatters.com/</p> <p>Key contact: info@mhmm.org.uk</p>

Bipolar UK	<p>Organisation supporting people affected by bipolar. They offer information, advice and support by phone and email, and through their website.</p> <p>Website: bipolaruk.org/</p> <p>Key contact: info@bipolaruk.org</p>
National Survivor User Network (NSUN)	<p>An independent, service-user-led charity that connects people with experience of mental health issues to give them a stronger voice in shaping policy and services.</p> <p>Website: nsun.org.uk</p> <p>Key contact: info@nsun.org.uk</p>
Student Minds	<p>The UK's student mental health charity. Student Minds delivers research-driven training and supervision to equip students to bring about positive change on their campuses through campaigning and facilitating peer support projects.</p> <p>Website: studentminds.org.uk</p> <p>Key contact: info@studentminds.org.uk</p>
Young Minds	<p>National charity committed to improving the mental health of all babies, children and young people. Provides information for both parents and young people.</p> <p>Website: youngminds.org.uk</p> <p>Key contact: ymentquiries@youngminds.org.uk</p>
MindOut	<p>A mental health service run by and for lesbians, gay men, bisexual, trans, and queer people.</p> <p>Website: mindout.org.uk</p> <p>Key contact: info@mindout.org.uk</p>
Campaign Against Living Miserably (CALM)	<p>A charity dedicated to preventing male suicide. CALM offers support and advice, challenges the culture that stops men from seeking help and pushes for changes in policy and practice in suicide prevention.</p> <p>Website: thecalmzone.net</p> <p>Key contact: info@thecalmzone.net</p>
Samaritans	<p>Emotional support for anyone feeling down, experiencing distress or struggling to cope.</p> <p>Website: samaritans.org</p> <p>Key contact: jo@samaritans.org</p>

Time to Change	<p>Time to Change is a national campaign to end the stigma and discrimination faced by people who experience mental health problems. It is run by Mind and Rethink Mental Illness and supported by the Department of Health, Comic Relief and the Big Lottery Fund.</p> <p>Website: time-to-change.org.uk</p> <p>Key contact: info@time-to-change.org.uk</p>
Sport and Recreation Alliance	<p>Umbrella body for sport and recreation in the UK. The Sport and Recreation Alliance alongside the Professional Players Federation and with support from Mind, have created the Mental Health Charter for Sport and Recreation.</p> <p>The Mental Health Charter for Sport and Recreation sets out how sport can use its collective power to tackle mental ill health and the stigma that surrounds it.</p> <p>Website: sportandrecreation.org.uk</p> <p>Key contact: info@sportandrecreation.org.uk</p>
State of Mind	<p>A charity that promotes positive mental health among sportsmen and women, fans and wider communities, and ultimately aims to prevent suicide. They raise awareness of the issues surrounding mental health and wellbeing and deliver education on the subject to all levels of sport, business, and education and community groups.</p> <p>Website: stateofmindsport.org</p> <p>Key contact: Philip.cooper@stateofmindsport.org</p>
Mental Health Football Association	<p>Helping create partnerships between football initiatives and those directly involved with supporting people who are experiencing mental health issues, such as NHS Trusts and standalone mental health support organisations throughout the UK.</p> <p>Website: facebook.com/MentalHealthFootball</p> <p>Key contact: communications@mentalhealthfootballassociation.com</p>
Fitness in Mind	<p>In partnership with Brentwood Leisure Trust, Fitness in Mind™ runs physical activity sessions that promote, encourage and provide physical activity as an aid to mental wellbeing. It is delivered by specially selected, qualified instructors, and friendly peer-support volunteers.</p> <p>Website: brentwood-centre.co.uk/sport-and-leisure/fitness-in-mind</p> <p>Key contact: fitnessinmind@brentwoodleisure.co.uk</p>

Sport in Mind

Independent Berkshire mental health charity that uses the power of sport and physical activity to promote mental wellbeing, help aid recovery, improve physical health, encourage social inclusion and empower people experiencing mental health problems to build a positive future for themselves.

Website: sportinmind.org

Key contact: info@sportinmind.org

You can find further information on mental health on our website at Mind.org.uk.

If you have any further questions please contact our sports team via Sport@Mind.org.uk.