

Discrimination and Mental Health

Equality Act 2010

Some people with mental illnesses may feel that they have been discriminated against because of their illness. This factsheet sets out the law of disability discrimination under the Equality Act 2010 and how this might apply to people with mental illnesses when they are at work, applying for jobs or using services.

You may find some of the information in this factsheet quite technical and wordy. If you feel you need to, ask someone you know to read through it with you or contact our team if you need anything made clear.

KEY POINTS

- The Equality Act 2010 protects disabled people from being discriminated against in their everyday lives. This includes many people with a mental illness.
- If you come under the definition of having a disability under the Equality Act, you are protected against being directly and indirectly discriminated against, or being harassed or victimised. You may also have a right to have “reasonable adjustments” made for you.
- The Equality Act protects you from discrimination at work, when applying for jobs or when you use services. Nobody should be discriminated against when accessing housing, education or any other services.
- In some circumstances, carers of people with a mental illness will also be protected by the Equality Act.

This factsheet covers:

1. [Which people with mental illnesses are protected?](#)
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The Equality Act 2010 brought together the previous law on discrimination such as the Disability Discrimination Act 1995, Sex Discrimination Act 1975 and Race Relations Act 1976. This new law protects anybody with a “protected characteristic” from being discriminated against in their everyday life. Protected characteristics include age, disability, race, sex, sexual orientation, pregnancy, gender reassignment, religion or belief and marriage or civil partnership. A person with a mental health condition is protected against discrimination on the basis of any of these characteristics. However, this factsheet only looks at circumstances where a person with a mental health condition is considered to have a disability under the Act, and how this will give them protection against discrimination.

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1. Which people with mental illnesses are protected?

The Act protects people with a mental health condition from discrimination if they fall within the definition of having a “disability”. The law applies to all employers and service providers in England, Wales and Scotland and so disabled people are protected from discrimination in work, education or housing or where they are trying to buy goods, services or facilities.

Does the word “disability” apply to me?

The word “disability” has a wide meaning under the Equality Act. Some people who do not normally call themselves “disabled” may be protected.

A person is considered disabled if they have a ‘physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities’.¹ This sounds quite technical, but the way that this might apply to you is explained below.

What is a mental “impairment”?

Most recognised mental illnesses will be considered a mental impairment. “Impairment” has not been defined in the Equality Act, but the emphasis is on the effects or symptoms of the illness and not just the diagnosis. Also, the side effects of medication can be considered an impairment. So if a person takes antipsychotic medication and this makes them very tired, this tiredness could be considered a ‘mental impairment’.

What does “substantial and long term” mean?

The word ‘substantial’ means that the effect that your illness has on you must be more than minor or trivial. Your illness will be considered to have a ‘long-term’ effect if it:

1. Has lasted for at least 12 months; or
2. Is likely to last for at least 12 months; or
3. Is likely to last for the rest of your life

What are “normal day-to-day activities”?

This question is about whether your condition affects your ability to do activities that a lot of people do frequently and fairly regularly. For

example, if a mental health condition affects your memory, ability to plan ahead, concentration and sleep patterns, it may affect your ability to get up in the morning, plan the journey to work, concentrate on a television programme, go shopping or complete an exam. These are just some examples of things that could be day-to-day activities.

This test is different to the previous test in the Disability Discrimination Act, which was more specific about the kinds of problems someone would need to have to be considered disabled.

My treatment prevents my symptoms from affecting my day-to-day activities. Can I still be considered to have a disability?

Yes. However, you will have to be able to show that your condition *would* affect your day-to-day activities if you were not taking steps to prevent this.² So if a person with depression would normally have a disrupted sleeping pattern and a low mood which would stop them being able to do day-to-day things, but sleeping tablets and counselling control the symptoms, that person is still protected by the Equality Act. Medical evidence may be needed to support this.

What if my illness comes and goes?

Many people recover from mental illness and some people have fluctuating symptoms. The Equality Act protects people from being discriminated against because they used to have a mental illness or if their symptoms have subsided but could well return in the future.³

Example

Mr P recovered from a period of depression three months ago, having had several depressive periods in his lifetime. He now has no symptoms, and he feels as though he would like to return to work. Although Mr P has recovered, his psychiatrist tells him that evidence shows that he has a 60% chance of having another depressive episode in the next three years. Mr P is protected from discrimination from potential employers because of his past disability, but he may also be protected as a disabled person now because his symptoms could well return in the future.

What if I am put at a disadvantage because of a short-term illness?

If your illness is only expected to last a short time, or if it does not substantially affect your day-to-day activities, it may be that you do not come under the definition of “disabled” under the Equality Act. However, this does not necessarily mean that you will not be protected. If you have been subjected to direct discrimination (see [next section](#)) because the person you were dealing with thought you were a disabled person, you may still be able to take action using the rule of “discrimination by perception”.

What is not considered a disability?

Regulations have set out that certain conditions cannot be included within the definition of a disability.

- An addiction to alcohol, nicotine or any other substance unless this addiction arose from medical treatment (for example, from being prescribed addictive drugs)
- A tendency to set fires
- A tendency to physically or sexually abuse other people
- Exhibitionism
- Voyeurism
- Hayfever
- A tendency to steal

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2. What kinds of discrimination are there?

There are a number of ways in which the Equality Act protects people with mental illnesses from discrimination. The Act protects you against:

- [Direct discrimination](#);
- [Indirect discrimination](#);
- [Discrimination arising from a disability](#);
- [Failure to make reasonable adjustments](#);
- [Harassment](#); and
- [Victimisation](#)

Direct Discrimination

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Direct discrimination is where someone treats a person less favourably than other people because of a disability. To prove direct discrimination, a person needs to show that they have been treated less favourably than a “comparator”. A comparator is someone who is in the same situation but who does not have a disability.

Example

Miss D has been diagnosed with bipolar disorder for all of her adult life. She tries to get a loan from a loan company, and discloses that she has a mental health condition. Without considering Miss D’s credit rating, the loan company decide not to give Miss D a loan because they consider people with bipolar disorder to be unable to control money. The loan company continues to provide loans to people in a similar position to Miss D but who do not have bipolar disorder. This is direct discrimination.

Indirect Discrimination

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This arises where there is a “provision, criterion or practice” that applies to everyone but that disadvantages disabled people. This includes all rules and policies that a service provider has that affect disabled people. A rule that disadvantages disabled people will be discriminatory unless it can be

shown that it is a “[proportionate means of achieving a legitimate aim](#)”. This is explained in section 4.

Example

Miss X suffers from anxiety and irritable bowel syndrome, which means that she needs regular toilet breaks. Her employer has a policy whereby all staff are only allowed a maximum of three toilet breaks in a working day. Although this policy applies to all staff, it has a disproportionate effect on some disabled staff, including Miss X. This policy will be discriminatory unless her employer can justify how it is a proportionate means of achieving a legitimate aim.

Discrimination Arising From Disability

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This is where someone has been treated unfavourably because of something that arises as a consequence of their disability, and it can not be shown that this is a [proportionate means of achieving a legitimate aim](#).

Example

Mr R has severe depression. As a result, he needs to take antidepressant medication which makes him very tired and he has occasionally come into work late. He explains this to his employer, but his employer thinks that this is unacceptable and dismisses Mr R. This could be discrimination arising from disability unless the employer can show that it is a proportionate means of achieving a legitimate aim. It could also be direct discrimination because a mental impairment caused by taking medicine can be considered a disability. Finally, the employer could have failed to make reasonable adjustments, which are considered on the next page.

Failure to Make “Reasonable Adjustments”

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A service provider or employer may be under a duty to make changes for disabled people if this will make the organisation more accessible. This is called the duty to make reasonable adjustments. If the current way of doing things puts people with a disability at a substantial disadvantage at work or when using a service, that organisation will be under a duty to make reasonable adjustments. It is a form of discrimination to fail to provide these “reasonable adjustments” for a disabled person if a service provider or employer knows or ought to know that the person is disabled.

The Act says that an adjustment can include changing a “provision, criterion or practice” or “physical feature” or providing equipment. This could include:

- making changes to policies or procedures
- modifying equipment,
- modifying premises, or
- providing additional aids such as extra support or equipment

However, there is no ‘set list’ of adjustments and so what is reasonable for one organisation to offer may not be reasonable for another.

When deciding whether a change is reasonable, an organisation can consider the cost of making the change and what resources are available, the level of benefit the change will bring to disabled people, and how practical it is to make the change. However, high cost alone is not justification for not making a reasonable adjustment, and an organisation cannot charge an individual for the costs of an adjustment.

Reasonable Adjustments at Work

Reasonable adjustments should be made for disabled people who face barriers at work or applying for jobs. There is no set list of what adjustments can be, or what adjustments are reasonable. At interview, adjustments could include changing the room or changing the way questions are asked. At work, adjustments could include allowing someone extra time off work, allowing flexible working, changing a role, or offering counselling or mentoring. Talk to the employer about how your condition affects you and what would help you to overcome any barriers. If the employer refuses to make an adjustment that you think it is reasonable for them to offer, you could consider taking action. See [section 7](#) for further information on taking action.

Example

Mr L has Post Traumatic Stress Disorder. He works for a firm of solicitors as a paralegal. Mr L enjoys his work and is very capable, but he gets very severe flashbacks when he is reminded of things that have happened in his past. There is a picture hanging on the wall in the office which causes Mr L severe anxiety and flashbacks, and he brings this to the attention of his manager, who knows about Mr L's diagnosis. However, the firm refuses to take down the picture as they say he is being "over-sensitive". This is likely to be a failure to provide a reasonable adjustment because there is little cost or difficulty in providing this change, and the benefit to Mr L would be substantial.

Harassment

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This is unwanted behaviour with regard to an individual's disability that has the purpose or effect of violating that person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

Example

Mr F has paranoid schizophrenia and works in an office. The staff at the company call Mr F "schizo" and graffiti his desk with abusive words and pictures. Mr F brings this to the attention of his employer and his employer does not take steps to rectify the situation. Even though Mr F's employer did not carry out the harassment, the company is still responsible for harassment carried out by its staff. However, this may not have been the case if the company did take reasonable steps to prevent this from happening.

Victimisation

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The Equality Act protects people who have made a complaint about discriminatory treatment they have received. A person should not be treated badly for trying to enforce their rights under the Act.

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3. What exactly is a “proportionate means of achieving a legitimate aim”?

Some kinds of discrimination cannot be justified. For example, a service provider cannot justify directly discriminating against a disabled person. However, in indirect discrimination and discrimination arising from a disability, a service provider can justify the effect that their behaviour has on a disabled person if it is a “proportionate means of achieving a legitimate aim”. A rule that can be justified in this way may still have a big impact on disabled people, but the law says that these rules are fair and legal. This is sometimes called ‘objective justification’.

A “legitimate aim” is not defined by the Act, but a wide range of aims could be considered legitimate. Legitimate aims could include the health and safety of staff or service users, the business needs of the service, or the requirement to make a profit. A legitimate aim must not be discriminatory.

“Proportionate” means that there must be a fair balance between the needs of the service and the needs and rights of the person who may be discriminated against. The method used should be an appropriate and necessary way of achieving the aim and be the least discriminatory way possible of achieving the aim.⁴

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4. How would a service provider or employer know that I am disabled?

With most mental health conditions, there is no way of guessing whether somebody has a condition or not. So when you apply for a job or try to buy a service, it may be unlikely that the person you are dealing with will be able to tell that you have a condition in order to make adjustments for you. On a day-to-day basis when using services, such as shops, many people with mental health conditions would probably not think it necessary to disclose their mental health condition. However, if you feel that you are at a disadvantage in comparison to other people because of your mental health condition, you can disclose your condition to service providers in the knowledge that you are protected against discrimination.

An area in which it may be more likely for people with mental health conditions to be discriminated against is in employment. In most circumstances, the Equality Act prevents an employer from asking questions about someone’s health conditions or disabilities before offering that person a job. Some people with mental health conditions may choose

to tell their employer about their condition, others would prefer not to. However, an employer is not under an obligation to provide reasonable adjustments for you unless that employer knows or ought to know about your condition and the way it affects you.⁵ If you are feeling that you are at a disadvantage in your job in comparison to other people because of a rule, practice or other feature of your workplace, you can talk to your manager or supervisor about this, again in the knowledge that you are protected against discrimination by the Equality Act. Of course, this does not guarantee that you will not be discriminated against, but you will be able to take action if you are.

What if everyone at work finds out about my condition?

Your employer should treat your disclosure confidentially. However, your employer may need to inform certain people in the workplace about your condition in order to make necessary changes for you. Your employer should get your consent for any disclosures that are necessary. It could be a breach of your employment contract if your employer does not create an environment of trust and confidence.

If you are worried that other staff will bring up your condition in conversation, make inappropriate comments or not speak to you at all because of your condition, you may be protected against this kind of behaviour if it amounts to direct discrimination, harassment or victimisation. You would also be protected by other employment laws.

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5. Can an employer ask me health questions before offering me a job?

Section 60 of the Equality Act says that people should not normally be asked questions about their health or disability before being offered a job.⁶ This is meant to prevent employers having information about you that could enable them to discriminate against you. It does not apply where the employer needs to find out:

- Whether you need any reasonable adjustments for interview
- Whether you will be able to carry out a task that you would need to do as part of the role
- Personal information about job applicants for monitoring purposes
- Whether you qualify for a scheme that favours disabled people getting jobs at the organisation
- Whether you have a disability that is required in order to do the job. E.g. Where an employer wants a deaf person to run a project helping deaf people

So you should not normally be asked questions about your health, such as whether you have had previous periods of sick leave, when you are filling in an application form or going to a job interview. However, an employer can ask you health-related questions once you have been offered a job.

If you *are* asked questions, it is up to you whether you answer them. It is important to try to find out why the employer is asking health questions when you are making this decision. If you choose not to answer these questions then you may be in danger of disciplinary action in the future if you get the job.

If you feel that you have been discriminated against in one of the ways in [section 2](#), you could take action against the employer (see [section 7](#)). You can also ask the Equality and Human Rights Commission to investigate the employer. Their contact details are at the end of this factsheet.

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6. I am a carer, am I protected by the Equality Act?

Carers and relatives of people with a mental health condition are protected from direct discrimination by the Equality Act under the rule of “discrimination by association”. This is where somebody has been treated less favourably than others because of his/her association with a disabled person. Of course, carers are also protected in their own right against discrimination on the grounds of any protected characteristic.

Example

Mr U is a carer for a man who has schizophrenia. Mr U applies for a job and he tells them that he is a carer. Mr U is not given the job and another person, who is equally as qualified as Mr U, gets the job instead. When Mr U asks for reasons, the employer say that his caring responsibilities would have got in the way of work. This is direct discrimination by association with a disabled person.

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7. How do I take action if I think I have been discriminated against?

It can be difficult sometimes to prove that the real reason behind any disadvantage that a disabled person suffers is down to discrimination, and not some other reason. It is important to collect evidence and keep a record of what has happened. For example, if you feel like you are being harassed at work, keep a diary of what was said, by whom and when.

Taking action in employment cases

There is a time limit of three months less one day from the discriminatory act to take proceedings to an employment tribunal. So if you are discriminated against on 13th March, you will have until 12th June to take action. However, you may wish to try to sort out your problem informally first. This could involve talking to the people who have discriminated against you or writing them a letter, whilst keeping a record of all contact made. However, you may lose the chance to take your case to an employment tribunal if you miss the time limit so bear this in mind if you try to take informal steps to resolve your problem.

If this doesn't work, you could try raising a "grievance" through your employer's disputes procedure. ACAS have produced a [code of practice](#) for how complaints at work should be handled and if this code is not followed by an employer or an employee, the employment tribunal may reduce or increase an award of compensation by 25%.

The Government Equalities Office has produced a questionnaire that you can ask the person you think has discriminated against you to complete. This will help you get evidence together before going to an employment tribunal. This questionnaire is available from the www.equalities.gov.uk website.

Taking action in cases involving service providers

In most other circumstances, there is a time limit of six months less one day to take a discrimination claim to the county court. Like in employment cases, this time limit is strict and so you should bear this in mind if you try sorting out the problem informally.

Again, you could try sending the organisation that you think has discriminated against you the questionnaire produced by the Government Equalities Office to see if it is worth making a claim.

Can I get specialist help with taking action in my discrimination case?

If you are on a low income, legal aid may be available for you to get specialist help with your claim. However, this may not include representation in court. The government is considering making changes to what legal aid can cover, but has said that it intends to keep legal aid funding available for discrimination cases. To be put in touch with a specialist working under legal aid, contact [Community Legal Advice](#) on 0845 345 4 345.

The Equalities and Human Rights Commission (EHRC) have a helpline (0845 604 6610) for people who think that they may have been discriminated against. Whilst the EHRC cannot take on many individual cases, it has a number of powers that can be used to enforce equality law.

I think my time limit has run out, what can I do?

You will need to get specialist advice as soon as possible. If there is good reason why you missed the time limit, you can sometimes have it extended. However, this is quite rare and you should always try to make sure that you take action within the time limits. Also, if you have been discriminated against over a period of time, you may be able to rely on the time limit running from the last time you were discriminated against. Generally though, a time limit will start from the date of each separate act of discrimination. To be safe, it is best to talk to a specialist as soon as you can to make sure you don't miss a time limit.

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8. The Equality Duty

Section 149 of the Equality Act 2010 places a general legal duty on public bodies, such as the NHS, Local Authority and government departments, to take steps to:

- Eliminate discrimination, harassment and victimisation.
- Advance equality of opportunity between people who share a characteristic (such as disability) and those who do not.
- Promote good relations between people who share a characteristic (such as a disability) and those who do not

This also applies to private organisations that are carrying out public functions, and is legally enforceable.

To make sure that there is equality of opportunity between disabled people and non-disabled people, public organisations must:

- Remove or minimise disadvantages that disabled people have
- Take steps to meet the needs of people with disabilities
- Encourage people with disabilities to participate in public life or in other activities that they do not tend to participate in

Also, to promote good relations between disabled people and people who do not have a disability, the public organisation must try to tackle prejudice and promote understanding of the disability.

The equality duty also includes further specific duties that are set out in further legislation that is created under the Equality Act.

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Please note – This information is only applicable in England. Whilst every effort has been made to ensure that this information is up-to-date and correct, this cannot be guaranteed. Please be aware that the “examples” in the text are not legal cases and they are just for demonstrative purposes. The law could be applied in a way contrary to our examples if a case reached a court or tribunal.



Government Equalities Office

<http://www.equalities.gov.uk/>

Equality and Human Rights Commission

<http://www.equalityhumanrights.com/>

0845 604 6610



¹ Equality Act 2010 s6

² Equality Act 2010 schedule 1 paragraph 5

³ Boyle v SCA Packaging Ltd [2009] (Although the Equality Act was not in force at this time and this case was applied to the Disability Discrimination Act 1995, this case would still appear to apply)

⁴ EHRC Employment Statutory Code of Practice (2011), para 4.28-4.32

⁵ Equality Act 2010 Schedule 8 paragraph 20

⁶ Section 60 is more specific than this and says that you can be asked questions once you have been offered a job or once you have been placed in a group of people who could potentially be offered work (such as casual or 'bank' workers)

The content of this product is available in Large Print (16 point). Please call 0300 5000 927.

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Rethink Advice & Information Service

Phone 0300 5000 927

Monday to Friday, 10am to 1pm

Email advice@rethink.org

The Rethink Advice & Information Service welcomes your feedback on whether this information was helpful to you. You can provide feedback in the following ways:

By email: feedback@rethink.org

By post:

Rethink Advice & Information Service
Rethink Mental Illness
89 Albert Embankment
London SE1 7TP

By telephone: 0300 5000 927



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