



VERSION CONTROL

Scope	Guidance to Clubs/Classes/RTCs on potential discrimination in formulating COVID-19 safety policies
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An unintended consequence of a COVID-19 policy is the potential exposure to a claim of discrimination. This Guidance looks at the relevant legislation and provides advice on how best to ensure compliance with it when drawing up COVID-19 policies.

Legislation:

The Equality Act 2010¹ applies to clubs and RTCs insofar as they come within the definition of either service provider, association and/or employer. Such organisations are prohibited from discriminating against, harassing or victimising a recipient of the service/member/prospective member/guest/employee due to a protected characteristic.

The characteristics that are protected by the Act are:

- Age;
- Disability;
- Gender reassignment;
- Marriage and civil partnership;
- Pregnancy and maternity;
- Race (including ethnic origin, national origin, colour, nationality);
- Religion or belief;
- Sex;
- Sexual orientation.

Our [Equality Act Guidance](#) provides more detail on the provisions of the Act and its application to Clubs/RTCs.

Creating COVID-19 Equality Act complaint policies:

The coronavirus pandemic is having a particular impact on people with certain protected characteristics, such as people with disabilities, older people and people from Black, Asian and ethnic minorities. As a service provider, association and/or employer you have a legal obligation to ensure the decisions you make in response to the coronavirus do not directly or indirectly discriminate against employees, customers or members with protected characteristics.

You are therefore advised to ensure you take into account your legal obligations under the Equality Act when determining COVID-19 policies, being alert to the potential to inadvertently discriminate against individuals with protected characteristics due to a perception of their risk profile.

When developing your COVID-19 policies put inclusivity and the needs of your stakeholders at the heart of your deliberations, paying particular attention to the equality impacts before

¹ Applies in England, Wales and Scotland and some provisions of it form part of the law of Northern Ireland.

making decisions. Indeed carefully considering potential equality implications will enable better and more effective decision making.

You should prohibit anyone who knows they have COVID-19 symptoms from attending your premises (both in terms of the wider societal impact as well as its duty of care to members). You may wish to advise those in high risk groups to consider very carefully whether their attendance at the premises is prudent in their circumstances. However, we do not recommend prohibiting them from attending the premises as that may inadvertently result in discrimination. We advise against blanket policies containing age/disability restrictions.

We suggest you plan for how you may be able to support people to be active and at the same time minimise contact with others, perhaps by having time slots where there are even fewer people on site and arranging for volunteers to provide socially distant support.

An unintended consequence of a COVID-19 policy is the potential exposure to a claim of discrimination, perhaps on the grounds of age and/or disability. It is possible that despite having taken into account potential equality implications, your COVID-19 safety policy may nevertheless have an unfavourable impact on a section of your membership/customer base with protected characteristics e.g. age/disability, as it may be impossible to limit the risk to such group to an acceptable level. In such circumstances it may not be considered to be unlawful to discriminate, provided that you are able to meet the tests set out below:

- Discriminating on the grounds of age, where such discrimination can be “objectively justified” may be lawful e.g. where an affiliate has good reason for the policy, procedure or practice which is a “*proportionate means of achieving a legitimate aim*”. That being the case if such a case were to come before the Courts it may, in these very specific and unprecedented circumstances, take the view that a policy aimed at protecting vulnerable members of a Club/RTC, could be objectively justified as a proportionate means of achieving a legitimate aim.
- Treating a disabled person less favourably because of something connected to their disability where such treatment is objectively justified. A policy that has the effect of treating a disabled member less favourably, for example on safety grounds may be capable of being objectively justified in these unprecedented times.

DCMS Guidance² states that “*it is more important than ever to consider inclusive guidance* ³*for people who need support to be active and organisations should consider this as part of their work to encourage people to return.*”

“The advice for clinically vulnerable groups remains the same. If you are in this group you are advised to stay at home as much as possible and, if you do go out, take particular care to minimise contact with others outside your household.”

If you are classified as clinically extremely vulnerable and living in a household with someone who has symptoms of COVID-19 or is positive for the infection you should self-isolate at the same time as the household and take particular care. If you are in this group and you and those in your immediate household are well then you should follow the guidance for those shielding. This has been updated to advise you can now consider

² Applicable in England, Scotland, Wales and Northern Ireland are advised to check devolved Government advice

³ 1st June 2020

taking safe exercise outdoors and meeting up with one person outside your household, always maintaining social distancing and robust hand and respiratory hygiene.”

NHS England advice⁴ in relation to people in the (clinically) vulnerable group (people at moderate risk) is “*you can go out to work (if you cannot work from home) and for things like getting food or exercising. But you should try to stay at home as much as possible. It's very important you follow the general advice on social distancing, including staying at least 2 metres (3 steps) away from anyone you do not live with.*”

Liability for Contracting the Virus:

We recognise that Clubs/RTCs may have concerns over potential exposure to liability for someone catching the virus at their premises, particularly as they cannot guarantee that participants will not be exposed to the virus at the premises. However, provided you meet your duty of care to implement COVID-19 safety measures and ensure that they are enforced and regularly reviewed, it is highly unlikely that you could be held liable for a possible contracting of the virus at the premises.

As with any liability, the best way to avoid it is to meet your relevant duty of care. In respect of the current crisis this equates to complying with Government legislation and guidance, assessing and managing risk by eliminating it as much as is reasonably possible. Provided you comply with your duty of care you are unlikely to be held liable should a member/customer contract C-19.

Additionally as far as a club environment is concerned, members assume an element of the risk themselves by the act of taking part.

It is likely to be extremely difficult to pinpoint the exact location of infection, although that may change with the roll out of the test and trace app.

If you have any queries, questions or comments on the information contained in this leaflet, kindly contact the Legal Team on 023 8060 4223 or legal@rya.org.uk.

RYA Responsibility Statement:

The RYA Legal Team provides generic legal advice for RYA members, affiliated clubs, class associations and Recognised Training Centres. The information contained in this Guidance represents the RYA's interpretation of the law as at the date of this edition. The RYA takes all reasonable care to ensure that the information contained in this Guidance is accurate and that any opinions, interpretations and guidance expressed have been carefully considered in the context in which they are expressed. However, before taking any action based on the contents of this Guidance, readers are advised to confirm the up to date position and to take appropriate professional advice specific to their individual circumstances.

⁴ 16th June 2020