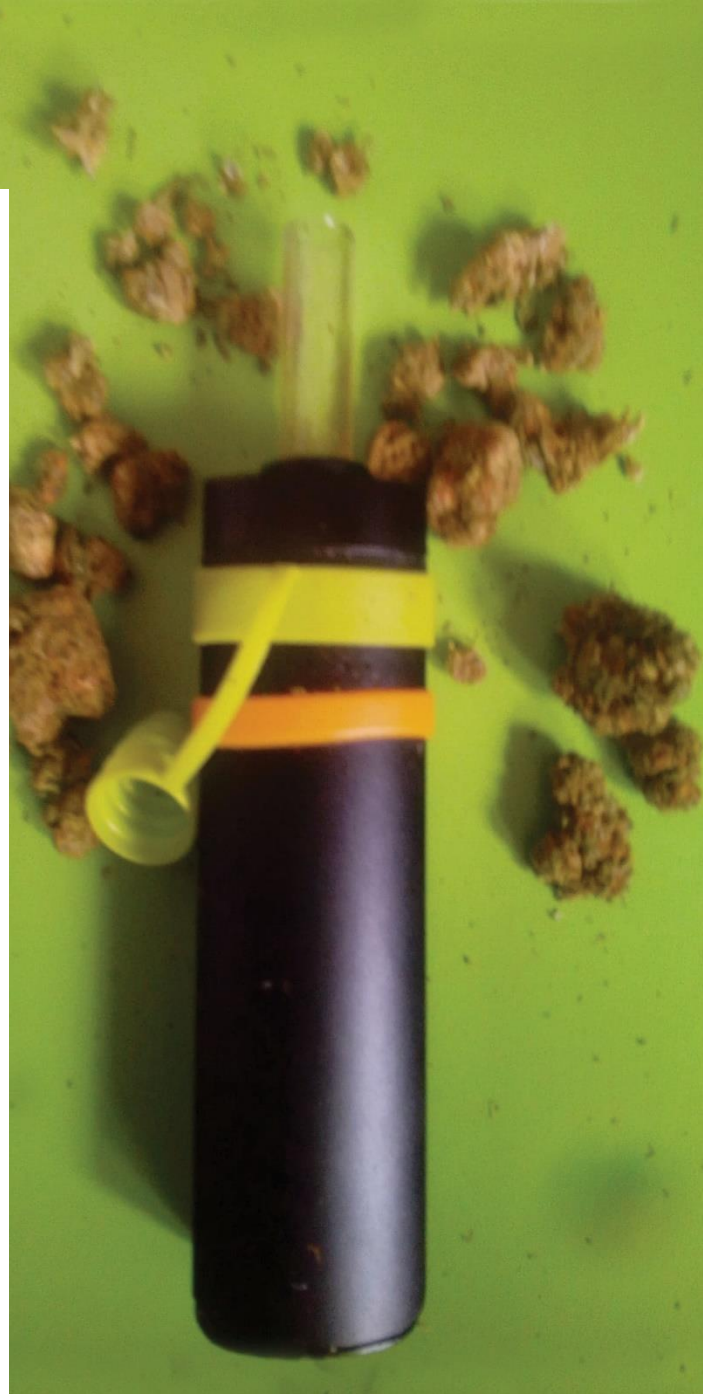


Guidance in Relation to Medical Cannabis Users as per the Equality Act 2010



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Seed our Future Ltd

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Guidance in Relation to Medical Cannabis Users as per the Equality Act 2010

How to avoid civil litigation for discrimination arising from disability

The following information is to notify individuals, businesses and/or organisations of their legal duties in respect of the treatment of those who are using legal cannabis for medical conditions.

Cannabis (oil and/or flower) has been legally available under prescription in the UK since 1st November 2018.

If you come across a medical user who is in possession of cannabis flower (only to be vaped) or cannabis oil, you must treat them the same as any other medical patient with a condition/disability.

The person should explain to you when asked that they are a medical cannabis user and that they use their medicine to treat their condition/disability (they are not required to inform you of what their condition/disability is).

You cannot refuse entry to an establishment or event based on their medication or disability, nor can you refuse their right to use their medication (i.e.: vaping indoors) as this would be a breach of Section 15 (1) of the Equality Act 2010.

Section 15 (1) of the Equality Act 2010 States:

15 Discrimination arising from disability

(1) A person (A) discriminates against a disabled person (B) if—

- (a) A treats B unfavourably because of something arising in consequence of B's disability, and
- (b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.

(2) Subsection (1) does not apply if A shows that A did not know, and could not reasonably have been expected to know, that B had the disability.

<https://www.legislation.gov.uk/ukpga/2010/15/section/15>

Cannabis is legal medication in the UK.

Cannabis (oil and/or flower) is legally available under prescription in the UK following changes in law on 1st November 2018: <https://www.gov.uk/government/collections/medicinal-cannabis-information-and-resources>

To date (July 2022), there are almost 20,000 medical cannabis patients and 17 medical cannabis clinics in the UK and this number is increasing exponentially. It is therefore likely that you will come across medical cannabis users and you must treat them the same as anyone else irrespective of your preconceived ideas around cannabis as this could lead to litigation in a civil court for ‘discrimination arising from disability’, breaches of equality and human rights and/or health and safety violations (serious adverse medical reaction resulting from denial of medication).

Cannabis is prescribed for a wide range of conditions including pain, neurological, psychiatric, gastrointestinal, oncological, paediatric, palliative, dermatological and complex care.

Definition of a disability.

The definition is set out in section 6 of the Equality Act 2010. It says you’re disabled if:

- you have a physical or mental impairment
- your impairment has a substantial and long-term adverse effect on your ability to do normal day-to-day activities

Some impairments are automatically treated as a disability, even if they don't affect your day-to-day activities.

These are covered in Schedule 1, Part 1 of the Equality Act 2010 and in Regulation 7 of the Equality Act 2010 (Disability) Regulations 2010.

<https://www.citizensadvice.org.uk/work/discrimination-at-work/checking-if-its-discrimination/check-if-youre-disabled-under-the-equality-act-work/>

Are medical cannabis users disabled in law?

Most, if not all the above-mentioned conditions to which cannabis is prescribed can meet the lawful definition of a disability depending on the individual’s circumstances.

A long-term effect means something that affects the person for at least a year. For example, if they had an operation that will make walking difficult for at least a year.

The impairment is still considered long term if the effects are likely to come and go. These are known as 'fluctuating or recurring' effects.

The definition of what is long term is in Schedule 1 of the Equality Act 2010.
A substantial effect on their day-to-day activities means one that's 'more than minor or trivial'.

It is important to be aware that many disabilities are not obvious.

Reasonable adjustments and mutual considerations.

The policy of the Act is not a minimalist policy of simply ensuring that some access is available to disabled people; it is, so far as is reasonably practicable, to approximate the access enjoyed by disabled people to that enjoyed by the rest of the public. The purpose of the duty to make reasonable adjustments is to provide access to a service as close as it is reasonably possible to get to the standard normally offered to the public at large (and their equivalents in relation to associations or the exercise of public functions).

The reasonable adjustments for medical cannabis users should be straight forward as you would simply treat them the same as anyone else with a medical condition/disability who needs to carry and take their medication as required.

It is important also that the user is polite and considerate to staff and the public when carrying and using their medication as far as is practical dependant on their condition/s as this allows for mutual considerations and reasonable adjustments to take place.

Cannabis Oil Vs. Flower.

Medical cannabis is provided in two forms, an oil which is taken orally and the flowering tops of cannabis plants for vaporisation. The oil often takes longer to take effect and is often taken at certain intervals whereas the flower provides an almost instant effect and is administered as required. This quick effect is often helpful for people suffering from neurological pain conditions, epilepsy, psychological conditions etc...

It is therefore important that the medical user can always carry their medicine with them.

Can medical users vape their medicine indoors?

As with any medication, it is needed to alleviate or prevent the symptoms of a condition and often in the case of vaping cannabis, the medical user will decide when it is needed. This is not dissimilar to the use of an asthma inhaler or an insulin injection for diabetes.

The vaporiser is a medical device that does not cause combustion and so is absent from legislation for smoking or vaping e-cigarettes indoors.

Does vaping cannabis infringe on the rights of other members of the public?

Some members of the public may object to seeing people vaping, especially in an indoor space as this is not the norm. There may also be people who dislike the smell of cannabis or believe that an illegal activity is occurring.

It is important to understand that the vape device is a medical device (which does not cause combustion – less smell) which administers medical treatment needed for the person's condition.

'It is never unlawful to treat a disabled person more favourably than a non-disabled person. Therefore, service providers may provide services on more favourable terms to a disabled person compared to a non-disabled person.'

https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf

Proving disability.

For discrimination arising from disability to occur, the service provider needs to know that the person has a disability and so the person with the disability should inform them of this when a situation occurs, however there is no requirement to prove their disability.

'We don't generally believe anyone should have to prove their disability prior to starting litigation for discrimination.'

'Accessing services: *We do not believe Service Providers should generally require proof of disability before making services accessible or providing adjustments. [The Codes of Practice on Services](#) make no mention of proving your disability except at the level of legal claims.'*

<https://www.reasonableaccess.org.uk/legal-stuff/disability-proof/>

What is unfavourable treatment?

For discrimination arising from disability to occur, a disabled person must have been treated 'unfavourably'. This means that he or she must be put at a disadvantage. Often the disadvantage will be obvious, and it will be clear that the treatment has been unfavourable: for example, a person may have been denied a service or given a poorer service. Being denied a choice or excluded from an opportunity is also likely to be unfavourable treatment. Sometimes the unfavourable treatment may be less obvious. Even if a service provider thinks that they are acting in the best interests of a disabled person, they may still treat that person unfavourably.

https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf

We hope that this information has proved useful and will help to prevent any form of discrimination or breach of human rights for medical cannabis users and help you avoid any civil litigation in the future.

If you require any further information, please do not hesitate to contact Seed our Future Ltd by emailing: seedourfuture@mail.com

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