

Addendum to the Novel Coronavirus COVID-19 Guidelines for practice Version 2: 16 April 2021

Patient mask-wearing and the Equalities Act 2010

The Government guidance on Working safely during coronavirus (COVID-19): guidance from step 4 [Shops, branches, and close contact services - Working safely during coronavirus \(COVID-19\): guidance from Step 4 - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/working-safely-during-coronavirus-covid-19-guidance-from-step-4) reminds service providers (this includes acupuncturists) and employers of their existing legal obligations relating to health and safety, employment and equalities duties.

The BAAC has already been made aware of concerns by patients and potential patients where the practitioner has applied a 'no mask, no treatment' policy. It seems timely to remind members of their duties to patients and potential patients who are disabled as defined in the Equalities Act 2010.

Before continuing, the Equalities Act 2010 applies to England, Wales and Scotland but not Northern Ireland.

Disability is what is called a protected characteristic under The Equalities Act 2010. The definition of disability is a physical or mental impairment that has a 'substantial' and 'long-term' negative effect on an individual's ability to do normal daily activities. Examples of symptoms and conditions that may amount to disability, which may prevent a patient or potential patient from wearing a mask include:

- panic attacks, flashbacks or other severe anxiety symptoms
- paranoia or hearing voices
- dissociating, or switching alter (something that happens to people with dissociative identity disorder)
- thoughts of self-harm or suicidal feelings
- depression
- anxiety
- asthma
- COPD
- other respiratory conditions

Always be mindful of hidden disabilities, which may not be obvious; especially when communicating with a potential new patient on the phone or by email.

Under the Government rules concerning the compulsory wearing of face-coverings, which are due to expire on 18 July 2021, a service provider is not permitted to question the person claiming an exemption as to the validity of the exemption.

Applying a blanket 'no mask, no treatment' policy without good cause may amount to one or more of the three overlapping forms of disability discrimination set out below.

Failing to make reasonable adjustments

This is a proactive duty to ensure that patients and potential patients with disabilities are not substantially disadvantaged when accessing acupuncture services. Reasonable adjustments, which may enable you to treat patients not wearing face coverings whilst minimising the risks to you, other members of staff, other users of the treatment room, and other patients may include:

- the practitioner wearing a higher grade more protective mask and PPE
- having a clear Perspex screen, which can separate you from the top half of the patient's body
- having all the windows of the treatment room open
- improving your ventilation system

Unfortunately, the legislation does not set out a clear list of reasonable adjustments that apply in all circumstances. What is 'reasonable' always depends on the individual circumstances of the matter, which may include (this is not an exhaustive list):

- your need to protect your own health and safety (e.g. if you are immunocompromised)
- the needs of your staff and your duty to protect their health and safety (e.g. if one of them is immunocompromised)
- the needs of your other patients and your duty to protect their health and safety (e.g. if one of them is immunocompromised)
- the needs of other users of the treatment room and your duty to protect their health and safety (e.g. if one of them is immunocompromised)
- whether you can access higher grade PPE and masks
- whether using a Perspex screen would detract from your treatment of the patient (e.g. reducing the choice of points so that the treatment would be less effective)
- your resources as a small business providing close contact professional services
- what alternative arrangements can be made for patients and potential patients to be treated by a practitioner who does not have a 'no mask, no treatment' policy

Whenever you are deciding how to make reasonable adjustments for disabled patients or potential patients you need to balance the needs of both sides carefully and document them.

Indirect disability discrimination

This happens when a service provider has a particular policy or way of working that has a worse impact on disabled people compared to people who are not disabled. Having a

'no mask, no treatment' policy could be such a policy. Fortunately, there is a defence if the service-provider can show that there is a good reason for the policy, and it is proportionate. The need to protect your health and safety or that of your other patients, members of staff or users of the treatment room may satisfy the defence. Again, it depends on the individual circumstances. When you are deciding whether to have a policy, which may have a worse impact on disabled patients and potential patients you need to balance the needs of both sides carefully and document your considerations and decisions.

Discrimination because of something connected to your disability

This is when a service provider treats someone unfairly because of something connected to their disability. For example, it may be treating a disabled person unfairly to refuse to treat them if they will not wear a face covering. The disabled person may be unable to wear a face covering because it is connected to their disability. The service provider has the same defence, as for indirect disability discrimination, available if the service-provider can show that there is a good reason for the policy, and it is proportionate.

Unfortunately, this is a complex area of law with few existing precedents. If you need specific legal advice, please contact the 24-hour legal helpline :

Legal and tax advice 0344 571 7978
Voucher code – X1232KC79BB5

Alternatively, if you would like to do some further reading:

[Definition of disability under the Equality Act 2010 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/definition-of-disability-under-the-equality-act-2010)

[Coronavirus - mask anxiety, face coverings and mental health | Mind, the mental health charity - help for mental health problems](https://www.mind.org.uk/information-support/coronavirus-mask-anxiety-face-coverings-and-mental-health/)

[Disability discrimination | Equality and Human Rights Commission \(equalityhumanrights.com\)](https://www.equalityhumanrights.com/en/disability-discrimination)

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