

OCD & WORK in England & Wales

Managing your OCD at work can be difficult. Some people hide their condition whilst others declare it. Whatever you choose to do, knowing your rights and exploring your options is essential. This leaflet will give you an overview of those rights and how to exercise them.

OCD Action takes every care to make sure that information is up to date and accurate; the charity, however, does not offer legal advice. Please consult a legal expert if you need specific legal information about your case.

OCD Action would like to thank Nick Fry, solicitor at Bindmans LLP, for his help in the preparation of this information sheet.

Your rights

Present government policy is to find ways to enable those with long or short term mental health problems to return to work, and there are now a number of organisations who can provide support for you if you want either to return to work or perhaps start work for the first time. Your local Jobcentre Plus should be able to provide you with help and support to find a job and in some areas specialist mental health schemes can also provide assistance. You can find out what exists in your area by asking your local CAB, Mind, Rethink or Community Mental Health Team. Please see the Sources of Support and Information section at the end of this leaflet

However, in spite of all the help on offer, many people contacting OCD Action are worried that they may be discriminated against if they declare their condition on any job application form. Below are some ideas and options for you to consider but this area of employment law is a specialism and is constantly developing so if you are having issues or dilemmas about disclosing your OCD that aren't answered by general guidance, then you should seek legal advice.

Please be aware that there is now no legal aid available for employment advice and/or representation but you can access free legal advice on discrimination and/or employment law from the Disability Law Service, ACAS, through your union and your local law centre as well as from national Mind's Legal Advice Service – see contact details below. If it is more than just general background advice that you are seeking it is always best to check whether the adviser handling your call is legally qualified in the area of law you are enquiring about.

A good place to start is with guidance issued by the Trades Union Congress (TUC) who represents millions of workers in the UK. The TUC provides a number of information booklets both for employers and employees and in its booklet "Representing and supporting members with mental health problems at work", which is endorsed by the Equalities and Human Rights Commission, it states:

“Many people with mental health problems will have conditions that fluctuate and it may be that they can go for long periods without having any particular difficulties. This means that many more people with mental health problems can obtain employment successfully, provided that employers are positive about developing an inclusive work culture that focuses on supportive solutions for individuals and improving the work environment for everyone..”

If you are considering working and you have OCD, then there are two pieces of legislation that you should be aware of and that could influence whether or not you disclose that you have OCD to your employer:

The Equality Act 2010

The Equality Act 2010 ('The Act') brought together 116 separate pieces of anti-discrimination legislation into one single act which provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Act says that employers are not allowed to discriminate against you because you are disabled.

Under the Act a person is 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 e.g. using a telephone, reading a book or using public transport etc. In this definition 'substantial' means more than minor or trivial, and 'long term' means lasting more than 12 months or likely to last more than 12 months.

The Equality Act 2010 Guidance on the definition of disability produced by the Office for Disability Issues (ODI) includes OCD in its list of examples of mental impairment.

The Mind Legal Unit's 'Proving Disability Checklist' can help with proving whether someone has a disability. To request a copy, email: legalunit@mind.org.uk.

Disclosing OCD

It is your right not to tell your employer about your disability if you don't want to. However, if you do disclose to your employer any information about your health or your disability, it should be treated by your employer as confidential and not disclosed to anyone else. More information about your rights in relation to information held about you can be found here on the Information Commissioner's Office website: <https://ico.org.uk/for-the-public/>.

Pre-employment health-related checks

The Act limits the circumstances when you can be asked health-related questions before you have been offered a job. Before you have been offered the job the employer can only ask you health-related questions to help them do one of the following:

- Decide whether you are able to do an assessment (such as the job interview);
- Decide whether they need to make any 'reasonable adjustments' to the assessment

process for you;

- Decide whether you can carry out a function that is essential (intrinsic) to the job;
- Monitor diversity in the range of applicants;
- Take positive action to assist disabled people;
- Assure themselves that, where the job genuinely requires you to have a disability, you have the disability.

Depending on the type of job you apply for you may also be asked to complete a medical questionnaire **after you have been offered a job**. This questionnaire is to assess whether there is a medical reason why you cannot do the job. If you have a disability which could affect your ability to do the role or result in you being disadvantaged in the workplace, then the employer must consider whether it needs to make any reasonable adjustments.

If a prospective employer asks you to complete a health questionnaire as part of the recruitment process you can report them through the Equality Advisory & Support Service (EASS): <https://www.equalityadvisoryservice.com/app/report>

Obligation to disclose under the Health & Safety at Work Act 1974

The Health and Safety at Work Act states that if your disability could cause implications for the health and safety of yourself or your colleagues you **must** tell your employer. If safety issues relating to your disability were to result in an accident at work and you had not told your employer about it you could be held legally responsible. Remember, employers cannot use any information to discriminate, only to consider any reasonable adjustments that may be needed.

Under the Health and Safety at Work Act, employees are under a duty to co-operate with their employer so the employer can comply with their health and safety responsibilities. Lying about your health or a disability could put you in breach of this duty and also put you at risk of dismissal at a later date. If your employer found out you lied they could argue that you had provided false or inaccurate information to them and betrayed their trust.

Whether to disclose

Whether you choose to disclose your OCD or not is a very personal decision and one where it might be useful to consider the options by getting some advice and looking at the possible pros and cons. You may feel that there is no reason to disclose your condition as it is not relevant and will not interfere with your work. Perhaps you have concerns about being rejected by an employer or that assumptions will be made about your ability to do the job, or that you will not get promoted.

Although negative attitudes certainly do exist there is a strong argument for telling your employer if you have a disability. Many employment agencies and advisors recommend disclosing that you have a disability because it is a proactive, empowering approach that helps you, the employee, to set the agenda. It also gives the opportunity to present a disability confidently and positively, rather than as something that should be concealed.

An employer can only ask questions about any reasonable adjustments that need to be made and are not entitled to quiz you about personal details and history. It can help to try to keep their focus on your ability rather than your disability. Some employers are keen to employ disabled people. Look out for the 'disability confident' message on job advertisements - this means that an employer has made some commitment to employing disabled people.

Disclosing - the Pros

- It can be very stressful to be in a situation where you feel you have to hide an illness, and this could make you feel worse.
- By disclosing, you give your employer the opportunity to help and support you. Problems at work can then be seen as a result of your illness rather than of poor performance.
- By disclosing, you ensure that you have certain protections under the Act. If you have not disclosed, you may have problems accessing your rights under the Act.
- If you choose to disclose, you are setting the agenda and are able to portray your OCD in the most positive way you can and counter any unproductive stereotypes that your employer could come across if he or she found out that you had the condition.
- Your employer may be happy to 'up' their intake of employees with disabilities - it looks good on their books!
- You are likely to feel more empowered and confident if you are accepted into a job where you know that your employer is aware of your condition and are seeking to make adjustments to help you.
- Your disability information is confidential – your rights are protected under the Data Protection Act 1998 and if you disclose, you can remind your employer of their obligation to keep this information confidential.

Disclosing - the Cons

- Discrimination against people with any mental illness is still common even in enlightened companies. You may feel labelled by your disability.
- Your long term career goals may be affected if your employer thinks you may become ill at some point.
- You may not see your OCD as a disability even if the law does.
- If your employer is not familiar with OCD s/he may be nervous of you and treat you

differently.

- Information may be shared inadvertently or otherwise with colleagues. (It is worth checking the privacy/ confidentiality policy of your intended employer). If information is spread about your condition without your consent your employer may be in breach of the Data Protection Act 1998.

Tips for disclosure

- Be as clear and as confident as you can be about explaining your condition - do it in layman's terms and don't blind them with science!
- If it helps, take in a pre-prepared statement or fact sheet about the condition (OCD Action can help here).
- Try not to be emotive but factual.
- Don't go on at great length - just be precise.
- Think about practice and transferable skills you have learnt as a consequence of managing your OCD and focus on them.
- Make clear to your employer any adjustments that would have to be made and why; but emphasise the positive things you could bring to your job, your skills, abilities and experiences.
- Do not assume that your employer will have a negative attitude towards you because of your OCD – they may not.
- Remember they should only ask you questions related to your OCD and how it will affect your work, not other personal questions.
- If you are unsure about what you need to disclose you can speak to an advisor at your local job centre.

Making reasonable adjustments

The Act places a duty on employers to make reasonable adjustments where a disabled worker would be at a substantial disadvantage compared with their non-disabled colleagues; the adjustment has to remedy the disadvantage. It covers 'provisions, criteria and practices', 'physical features' and 'provision of auxiliary aids'. So, for the duty to arise the individual must be put at a substantial disadvantage compared with a non-disabled colleague by a provision, criterion or practice of the employer, by a physical feature of the employer's premises or by the lack of an auxiliary aid.

You do not need to come up with suggestions as to what reasonable adjustments an employer might make, but it may help to do so, and the employer must consider **any** reasonable adjustments that an employee proposes.

It is important that an adjustment will help the employee to overcome the disadvantage. If it does not, it is unlikely to be considered reasonable. It is therefore important for you as an employee to explain what would help and whether particular arrangements are working.

As an employee you are not expected to contribute to the cost of making the reasonable adjustments, but grants and other funding may be available to an employer.

The employer is not under a duty to make reasonable adjustments if they do not know that you are disabled and cannot reasonably be expected to know. This means that if your potential or current employer has made reasonable attempts to find out about your health condition and you have not disclosed that you have a disability then they can't be expected to make reasonable adjustments.

A discrimination claim in relation to a failure to make reasonable adjustments would be unlikely to succeed if your employer did not know that you had a disability and could not reasonably be expected to have known.

Other discrimination rights

In addition to a failure to make reasonable adjustments the Equality Act 2010 protects people with a disability from:

- A. Direct discrimination:** This is where a person is treated less favourably than someone else because of their disability (section 13 EA). E.g. excluding someone with OCD from meetings or emails or micromanaging them simply because they have a mental health problem. N.B. It is not direct discrimination to treat a disabled person more favourably than a non-disabled person.

- B. Indirect discrimination:** This is where an employer's practice or arrangement, which applies to everyone and appears to be neutral and non-discriminatory, puts a disabled individual at a particular disadvantage compared to people who are not disabled. Unless you could objectively justify the practice or arrangement, this would be unlawful. E.g. a policy of not allowing employees to work different hours could put an employee with a certain type of OCD (where they struggle to leave home at a set time) at a particular disadvantage compared with other staff. Indirect discrimination is unlawful whether or not the employer knows the employee has a disability.

- C. Discrimination arising from disability:** This states that it is discrimination to treat a disabled person unfavourably because of something arising or resulting from their disability. E.g. someone with a certain type of OCD might need extra time to recheck information or figures before submitting them. The delay caused by this is arising from their disability. If the employer disciplined them for the delay (e.g. by giving them a warning) it could be unlawful discrimination. This type of discrimination is unlawful where the employer or other person acting for the employer knows or could reasonably be expected to know that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is 'a proportionate means of achieving a legitimate aim'.

- D. Victimisation:** This is where a person is subjected to detrimental treatment or placed at a disadvantage by their employer because they have done something (or intend to do something) to protect or enforce the right not to be discriminated against, e.g. by making an allegation of discrimination, or supporting someone else who has made an allegation of discrimination.
- E. Harassment:** This is defined under the Equality Act as unwanted behaviour related to disability that has the purpose (or effect) of violating someone's dignity or creating an environment that is intimidating, degrading or humiliating. E.g. where colleagues or customers make fun or light of someone's OCD or use abusive language towards them because of it.

What to do if you think you have been discriminated against

If you think that you have been discriminated against at work there are 3 possible options open to you:

- **Informal route** - try to resolve the problem by talking informally with your colleagues, manager or human resources department. Your union may be able to assist with this.
- **Formal route** - you may want to write a formal grievance letter to your employer using your employer's grievance procedure.
- **Legal route** - you may want to bring a legal claim in the Employment Tribunal. Please check the **Advisory Conciliation and Arbitration Service (ACAS)** website for information about their Early Conciliation service: <http://www.acas.org.uk/media/pdf/c/h/Early-Conciliation-flowchart.pdf>

For more information please read the Equality & Human Rights Commission's useful information for people who feel they have been discriminated against:

<https://www.equalityhumanrights.com/en/multipage-guide/dealing-discrimination-employment>

Sources of Support & Information

- **The Equality and Advisory Support Service (EASS)** – advises and assists individuals on issues relating to equality and human rights, across England, Scotland and Wales. Provides information but not legal advice.
www.equalityadvisoryservice.com

Telephone: 0800 444 205

Monday to Friday: 9am to 7pm; Saturday: 10am to 2pm.

- **Advisory Conciliation and Arbitration Service (ACAS)** – provides help and advice for employers and employees including early conciliation if things go wrong. Information on website, online helpline accessed via website and helpline: 0300 123 1100 Monday, Wednesday to Friday: 8am to 8pm; Tuesday: 8am to 6pm; Saturday: 9am to 1pm.
www.acas.org.uk
- **The Disability Law Service** – provides information and advice, and can provide free legal representation on employment matters in the Greater London area: 020 7791 9800
www.dls.org.uk/
- **TUC** (The Trades Union Council) - www.worksmart.org.uk - for information on employment rights.
- **Law Works** – The LawWorks Clinics Network is a nationwide network of free legal advice sessions which LawWorks supports. Clinics provide free initial advice to individuals on various areas of law including social welfare issues, employment law, housing matters and consumer disputes.
www.lawworks.org.uk – England & Wales
- **Law Centres Network** - www.lawcentres.org.uk For a list of local law centres providing free legal advice.
- **Mind** - Information on discrimination at work and how to get further help and advice.
http://www.mind.org.uk/information-support/legal-rights/discrimination-at-work/#.V_9gUOArLs2

Mind Legal Advice Service: 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.

0300 466 6463 11-2 Mon-Fri

Email: legal@mind.org.uk

- **Office for Disability Issues:** www.odi.dwp.gov.uk
Equality Act 2010 definition of disability guidance:
www.odi.dwp.gov.uk/docs/law/ea/ea-guide-2.pdf
- **Advice Now** – resources for people thinking about/going to a court or a tribunal without

legal representation.

<http://www.advicenow.org.uk/>

- **Access to Work (AtW) scheme** – if you need support to carry out the tasks of your job or to start work this scheme can provide practical advice and support and may be able to provide money towards your extra employment expenses e.g. help towards the additional costs of taxi fares if your OCD means you cannot use public transport to get to work. The scheme cannot be used to pay for reasonable adjustments under the Equality Act 2010 or standard equipment needed by anyone to carry out your job as these are the responsibility of your employer. For more information see: <https://www.gov.uk/access-to-work/overview> and: <http://www.disabilityrightsuk.org/access-work>
- **Workplace Mental Health Support Service** - is run in partnership with the Access to Work scheme and can provide support tailored to your needs for up to 6 months. http://www.remploy.co.uk/info/20137/partners_and_programmes/227/workplace_mental_health_support_service
- **Employment Advisors in Improving Access to Psychological Therapies (IAPT) Services** – this is an England-wide pilot project to help people with a range of mental health issues to find work or retain their job when they become unwell. The advisors will be working alongside therapists and GPs. You can contact or check the website of your local IAPT service to find out if it is involved in the pilot: [http://www.nhs.uk/Service-Search/Psychological%20therapies%20\(IAPT\)/LocationSearch/10008](http://www.nhs.uk/Service-Search/Psychological%20therapies%20(IAPT)/LocationSearch/10008)

Last reviewed: October 2016