
England Golf

Guidance - The Equality Act 2010 and Golf

April 2018

Introduction

In 2010 the Equality Act 2010 (the Act) received Royal Assent. The Act codified and implemented existing UK discrimination law and the four major EU Equal Treatment Directives.

Since implementation of the Act, golf's national governing bodies have received a large number of enquiries from golf clubs and individual members asking how the Act affects clubs and their members.

Having studied the Equality Act 2010, England Golf, in collaboration with Mills & Reeve LLP, have produced this document to provide guidance to golf clubs and members.

This document contains the advice and opinions of England Golf. It should not replace legal advice tailored to your specific circumstances. A golf club is also often an employer and will be subject to the equality rules regulating equal treatment of employees. This is outside the scope of this note which purely looks at the rules governing equal treatment of a club's members, guests and the general public.

Does the Act Apply to Your Club?

The Act will almost always apply to a golf club, either because it is an association or because it provides services to the public.

1.1 Associations

Part 7 of the Act prevents Associations unlawfully discriminating against their members, associate members, former or prospective members, former or prospective guests and guests.

Part 7 defines Associations as bodies:

- with 25 or more members,
- which control access to membership by rules and
- which use a genuine selection process on personal criteria.

As the majority of clubs require that potential members' applications are passed by a committee, usually involving an interview, they will be associations.

1.2 Service Provider

If there is no selection process for membership then the club will not be an association under the Act, even where those who enjoy the club's services are referred to as its "members".

The Act will still apply to these clubs as they will be providing services to the public. Part 3 of the Act prevents service providers from the unlawful discrimination of members the public.

Even if a club is an association, it will also be a service provider if it opens its golf course, café and shop to members of the public on certain days of the week or when spectators attend to watch club competitions. Where a club opens competitions to non-members that may also be considered providing a service to members of the general public.

2 What Does the Act Prevent?

2.1 Protected Characteristics

The Act prevents unlawful discrimination on the basis of the following protected characteristics:

- Age;
- Disability;
- Gender reassignment;
- Pregnancy & Maternity (which includes breastfeeding)
- Race
- Religion or belief;
- Sex;
- Sexual orientation.

Example: A club has a waiting list but fast-tracks single figure handicap players to the front of the list. Golf handicap, talent or ability is **not** a protected characteristic and therefore this would not be discrimination under the Act.

The Act also controls discrimination where:

- A person does not have the protected characteristic but was treated as if they had.
Example: a club mistakes a woman applying for membership as a transsexual woman and refuses her membership on that basis.
- A person is discriminated against because of their association with someone who has a protected characteristic.
Example, if the husband of a disabled woman was prevented from entering the club because of his wife's disability.

3 What are the types of unlawful discrimination?

3.1 Direct Discrimination

Direct discrimination is when a person is treated less favourably than another person was or would have been because of a protected characteristic.

Example: Club rules do not permit women to play on the course on Sunday mornings. Women, who share the protected characteristic of their sex are being treated less favourably than men in this case as they do not have the same rights of access to the course. This is direct discrimination because of sex.

Example: A club is holding its annual dinner. The spouses of members are also invited to the dinner as guests of the club. The spouse of one member is black and is not invited to the dinner because the organisers believe that the other members and their guests will object. This is direct discrimination because of race.

3.2 Indirect Discrimination

This is where a club does something which has a worse impact on people who share a particular protected characteristic than on people who do not share that characteristic.

Example: A club has a 'no dogs' rule. If the club bars a guest who is a disabled person who uses an assistance dog, not because of their disability but because they have a dog with them, this could be indirect discrimination arising from disability.

Objective justification - it will not be indirect discrimination if a club can show that its actions were a proportionate means of achieving a legitimate aim.

Legitimate aim - It is not difficult to establish a legitimate aim, it must simply relate to a real need of the club. There is not a set list of legitimate aims, a legitimate aim could be anything that relates to the club's needs as a business and as a service provider. Below are some possible examples of what a legitimate aim may be:

- Ensure services are targeted at those who most need them.
- Ensure the health and safety of those using the service.
- Prevent fraud or other abuses of the service.
- Ensure the wellbeing or dignity of those using the service.
- Increasing the club's revenue or decreasing its costs.
- Raising a club's membership or its profile in the local community.

Proportionate - It is far more difficult to show proportionate means.

- The method used was reasonably necessary to achieve this legitimate aim.
- The clubs' need to achieve the aim outweighs the discriminatory effect.
- The club could not have used less discriminatory means to achieve the same objective.

Example: Club rules state that all members, regardless of sex, are permitted to play at all times, but the course is closed 40 Saturday mornings of the year for men's competitions. These competitions are very popular and well attended, however as a result, female members are disadvantaged as they cannot access the course.

Legitimate aim? The club may well be able to establish a legitimate aim in holding men's tournaments 40 Saturday's a year, such as "raising revenue in ticket and entry sales", or "promoting the club in the local community".

Proportionate means? The club would have to show that blocking the Saturday mornings for men's competitions was (i) reasonably necessary for raising revenue and promoting the club, (ii) that the club's need to achieve the revenue and promotion outweighs the unequal treatment of female members and (iii) that revenue and promotion could not be achieved in a less discriminatory way. Whether or not the club will be able to do this will come down to the facts, if it cannot then it will be liable for indirect discrimination. It is suggested that tee times for women cut into the competition might be a solution to the issue.

3.3 Victimisation and Harassment

Victimisation is when someone is treated less favourable because they complained about discrimination or they helped someone complain about discrimination.

Example: A guest at a club complains that club staff told her she was not allowed to breastfeed her baby except in the toilets. Because she has complained, the club tells her she is barred altogether. This is almost certainly victimisation.

Harassment is when a person receives abusive behaviour because of their protected characteristic.

Example: A member of a club's management committee is verbally abusive to a disabled guest. The abuse is related to the guest's disability.

3.4 Failure to Provide Reasonable Adjustments for Disabled People

The Act provides for a special duty in relation to disabled people, the duty to provide reasonable adjustments. It is unlawful discrimination to fail to provide reasonable adjustments.

The aim of reasonable adjustments is to ensure that as far as is reasonably possible, disabled people are able to join a club and use its services to the same standard and on the same basis usually offered to non-disabled people. The duty is 'anticipatory' and clubs should think in advance (and on an ongoing basis) about what disabled people with a range of impairments might reasonably need.

Adjustments need not be expensive and clubs are not required to do more than is reasonable. Clubs should consider factors such as;

- o How practicable the adjustment is to implement;
- o How effective the adjustment will be;
- o How it will impact other members;
- o The size and resources of the club relative to the cost of the adjustment.

Example: A member has Parkinson's disease and although he can walk short distances, he cannot play a full round of golf unless he uses a golf buggy. The club has a rule that buggies may not be used in competitions. Altering this rule to allow disabled people to use buggies in competitions would be a reasonable adjustment to make considering it would be inexpensive, would allow the member to compete and would not adversely impact the fairness or safety of the competition as a whole.

Example: A club is considering a ban on buggies during the winter months when bad weather adversely affects the course and the use of buggies can cause large amounts of damage. However disabled members of the club struggle to access the full course without the aid of a buggy. If the club maintains regular course inspections (daily) and genuinely considers reasonable adjustments such as (i) alternative buggy routes where possible or (ii) reducing damage by limiting use of buggies to disabled people only, they will reduce the risk of discrimination claims.

How can Golf Clubs Prevent Unlawful Discrimination?

Clubs should examine their practices, rules, policies and conventions to ensure that they are non-discriminatory, either directly or indirectly. This does not mean that all must be treated identically, but rather that all are treated fairly and given equal opportunities to participate and enjoy the benefits of membership.

3.5 Granting Membership and Admitting Guests

Clubs should examine their admissions process and criteria to make sure that, because of an applicant's **protected characteristic**, they do not:

- (a) refuse membership or grant it on less favourable terms, or
- (b) refuse to allow a person to be a guest.

Example: A club refuses to accept a man's application for membership or charges him a higher membership rate because he is Polish. This is direct discrimination because of race.

Exceptions to this rule:

- **Single Sex Membership** - It is **not** unlawful discrimination for a club which is an association to restrict membership and guests to a single sex (this may not apply to golf clubs who are merely service providers and not associations, see question (M) below).
- **Reduced Fees** - It is **not** unlawful discrimination against members paying full fees, where a club provides discounted subscription, joining or playing fees;
 - On the basis of disability,
 - On the basis of age (see the answer to question (A) below), or
 - As part of the club's positive action, assuming the criteria can be met, (see '*Positive Action*' below).

Rights and Provision of Service

Clubs should ensure sure that, because of a **protected characteristic** they do not;

- (a) Deny a member or service user the full benefits of their membership rights,
- (b) Provide a member, guest or service user with a lessor level of service than other members.

Example: A member has invited his father-in-law to play at his club. When they arrive at the club, the member is told that his father-in-law cannot play that day because he will "take too long and annoy the members" due to his visual impairment and use of a guide to assist him in his play. Had the father-in-law not been disabled he would have been allowed to play. The club has provided him with a lessor service as a guest at the club because of his disability.

Exceptions to this rule:

- **Separate sport activities** - It is **not** unlawful discrimination for a club to separate its sporting activities by;
 - Sex (for example a club may have single sex competitions, see question (I) below).
 - Age (for example a club may limit competitions and activities to certain age groups, see answer to question (A) below).
- **Pregnant women's health and safety** – It **may** be lawful for a club to restrict a woman's access to a benefit or service in the short term, if it is reasonable to believe that giving access would create a risk to her health or safety **and** the club would take similar measures in respect of persons whose health and safety might be at risk because of other physical conditions (such as a person at risk from a weak heart).

- **Favourable treatment** - It is **not** unlawful discrimination against those who do not benefit, where a club provides better service or benefits to certain guests, members or service users;
 - Because they have a disability (in fact there may be an obligation to do so, see '*Failure to Provide Reasonable Adjustments to Disabled People*' above).
 - Because of their age, or length of membership (see the answer to question (A) below).
 - As part of the club's positive action, assuming the criteria can be met (see '*Positive Action*' below).

Managing Staff and Agents

A club may be held legally responsible for the unlawful discrimination of someone who is;

- Employed by the club (club staff) and the discrimination occurred whilst they were doing their job.
- Acting under the instruction of the club (an agent, for example a committee member) and the discrimination occurred whilst carrying out the club's instruction.

Example: A pro employed by a club refuses to give a lesson to a member the pro knows to be gay, because he is prejudice against gay people. The member could bring a claim for discrimination against the club and the pro.

A club could be found to be responsible for the discrimination of its staff or agent even where it did not know about or approve of the discrimination. However, a club will not be held responsible where it can show that it took all reasonable steps to prevent its staff acting unlawfully, or where it can show that an agent did something different than asked and was acting outside the club's authority.

Examples of reasonable steps a club could take are:

- **Training** – Telling club staff and agents about equality law, and expected standard of behaviour.
- **Equality policy** – Writing down the expected standard of behaviour.
- **Terms of employment** – Including a requirement about equality law in staff contracts.
- **Investigation** – Investigating any complaint of discrimination and taking appropriate action.

Usually a club will not be responsible for discrimination by someone other than its staff or agent. However, it is possible that a club could be found to be legally responsible for failing to take action where it was aware of discriminatory conduct (of a member towards a guest for example) and it took no action to prevent its recurrence.

4 Positive Action

A club may wish to do more than merely stop discrimination, they may wish to "reverse" past discrimination or promote a more proportionate representation of people with a protected characteristic. The Act to some extent allows for this through the mechanism of "Positive Action".

If a club reasonably thinks that people sharing a certain protected characteristic:

- suffer a disadvantage connected to that characteristic or have different needs,
- or if their participation in the activities, or membership, of the club is disproportionately low,

the club can take action which would usually be discrimination, as long as that action is a **proportionate means** of enabling or encouraging participation from the targeted group.

Example (Part 1): A club has 1000 members of which only 90 are female. The Management Committee decides that a campaign is needed to encourage women to join. They wish to stay within the scope of “positive action” so that existing or prospective male members cannot bring a claim for discrimination. Initially they;

- Increase female participation adds in female focused publications,
- Offer free taster sessions to women,
- Offer a number of free coaching sessions to women.

These initial steps will not significantly disadvantage existing and prospective male members and are therefore likely to be proportionate.

What makes positive action “proportionate”?

The extent to which it is proportionate to take positive action which may result in people without the relevant characteristic being treated less favourably, will depend, among other things, on;

- o the seriousness of the relevant disadvantage,
- o the extremity of need or under-representation, and
- o the availability of other means of countering them.

Example (Part 2): Unfortunately, after monitoring the effects their campaign, the club finds it has only marginally increased female membership. There is still a significant imbalance. They decide to take further action by:

- Waiving the joining fee for women,
- Making the first month free for women,
- Offering women a discounted membership rate thereafter.

These later steps clearly discriminate against existing and potential male members. However, the club decides that on balance these actions are still proportionate because of (i) the extremity of the underrepresentation of females and (ii) other avenues have failed. Nonetheless the club is in a precarious position and will need to monitor the success of these steps closely to see if they are having a material effect in increasing female membership. As soon as the level of female membership has increased to the target level, they should remove the discounts.

So, can clubs provide discounts to one sex under the ‘Positive Action’ exemption?

Any club which is considering giving discounted membership to women needs to carefully consider the following points;

- o **Discounts should be a last resort:** There are many ways to encourage female representation (see *Example Part 1*). Discounts are unlikely to be proportionate if a club has **any other means of encouraging female representation** which is less discriminatory towards men;
- o **There is always a risk:** Even if granting discounts is the only way to encourage female participation it is still risky. A judge may still find that the discriminatory effect caused by the discount outweighs the benefits of the positive action.

5 What are the Penalties/Remedies Contained Within the Act?

Where a service user, guest or member of a club (whether past, present or prospective) believes they have been unlawfully discriminated against they may challenge the club's action, processes and policies in court. Cases heard in the County Court may result in damages being awarded against the club in the favour of the complainant. This means that the complainant can receive monetary compensation for not only the harm they suffered as a result of the club's treatment, but also for "injured feelings". The club may also be compelled by the court to alter their practices to prevent future cases of discrimination.

Clubs should consider not only the financial damage of losing such a claim in court, but also the reputational damage to the club and the sport as a whole.

6 Common Questions

The following provides some examples of the questions that have been asked by clubs regarding the Act. They are intended to provide you with a better understanding of the Act and its application to golf, but the individual circumstances of your club should be considered in the light of the principles of the legislation.

Subscription Discounts

(A) A Golf Club has a "Senior" category of membership for both men and women. To qualify, the member must have been a member for 15 continuous years in the full subscription category and aged at least 65 and have joined before 2008. May the club still offer this "loyalty discount"?

If a golf club wants to treat members and guests differently because of their age there are various circumstances (exceptions) where this is still allowed by the law.

Concessions – these allow golf clubs to offer concessions to members above/below a certain age or based on 'long service/membership'.

- o Golf clubs can use age to determine eligibility for concessions, discounts or the like.
- o Golf clubs are free to set their own age limits for concessions.
- o There is no restriction on the nature of the concession. A golf club could for example offer discounts on the price of membership according to a person's age or length of membership or they could offer free access to facilities at certain times to certain age groups.

Sport - allows for the continuation of age-restricted sports competitions, for example, under-21s' competitions and veterans' competitions.

- o Golf clubs can continue to operate age limits and age bands to secure fair competition or the safety of competitors or to comply with rules determined at a national or international level or by sports governing bodies.

Objective Justification – If a golf club has other policies or practices which amount to age discrimination in the provision of services, and they do not come within an exception, they will still be lawful if they can be 'objectively justified' (see Indirect Discrimination above for the test for Objective Justification).

(B) We offer discounts to younger members between the ages of 18 and 28. Does the Equality Act 2010 mean that we can no longer do so?

Please see response above.

(C) Can our club offer discounted membership fees to women in order to encourage female participation?

This is very risky. This policy directly discriminates against prospective and current male members. A club would be far better to use some other method of promoting female membership that is less discriminatory to men.

It is possible that discounted membership may be a proportionate means of achieving Positive Action if there is no other practical way of increasing female participation. However, this is not certain and a judge may still decide that the benefits do not outweigh the discriminatory effect against male members. (See '*Positive Action*' above)

Presidency, representation, voting rights and committees

(D) How are voting rights affected by the Equality Act 2010? Will all members (whatever their subscription rates e.g. house or juniors) have the right to vote?

Type of membership is not a protected characteristic therefore you may offer different levels of service to members dependent on the membership package they have, and therefore exclude voting rights to some categories of membership. However, the differences cannot be based on a protected characteristic, and therefore all packages must be available to both men and women, disabled and non-disabled people, etc.

Although it may be lawful to exclude voting rights to some membership categories, consideration should be given to the reasons for this restriction. The perspective of those in different categories deserves attention and could provide the club with a balanced approach to its business.

(E) A club has a Management Committee of about 8 men, the Lady Captain and the Lady Secretary. The ladies' section also has their own committee which independently manages the ladies' fixture list, handicaps, subscriptions and finances. Is the club required to increase the number of women on the Management Committee, and disband the Ladies' Committee?

It is not unlawful to have a committee which is unbalanced in numbers of men and women, although good practice would suggest a minimum of 30% of each gender. The relevant issue is rather the means by which an individual may be elected to the committee, how members participate in the election process and the fair representation of all members.

If women are restricted from being elected to positions on the Management Committee, or if women are restricted in their voting rights in comparison with men, then it is possible that these arrangements are unlawful. If certain positions within the men's section are afforded a place on the committee, where their equivalents on the women's committee are not, then this may also be unlawful.

It is important that a member of either sex has a reasonable chance of election to a position of representation, not just in terms of the rules of the club, but also in terms of their practical implementation. In effect, it may not be sufficient to simply change the rules regarding who may stand for election - either sex must have a fair and equitable experience of the process of standing for election.

It may not be necessary to disband the Ladies' Committee, unless this results in an inequitable treatment of men within the club, but by the same token, the existence of a Ladies' Committee does not allow a different approach to be taken to the balance of representation on the main Club Management Committee.

(F) Our club has a Ladies' Captain and a Club Captain. The Club Captain is appointed by previous captains and must be male. Is this practice still acceptable under the Act?

Where the Club Captain has only been selected by male members, and by convention, if not by constitution, must be male, the current practice should be amended to avoid challenge under the Act. The Club Captain, in order to truly live up to that title, must be able to be of either sex and selected through a fair process which provides women with a reasonable chance of selection.

This also applies to club presidency. As members of the club, women should be afforded the same opportunities as the male members and be able to run for and be elected as Club President.

Access to the course and competitions

(G) The rules of a club state that women may only play after 2pm in the winter and after 4pm in the summer on a Saturday. Women pay 80% of the full subscription rate in return for this restriction. The vast majority of female members do not wish to pay full subscription rates in return for full playing rights. They wish to maintain the current situation. How does the Act affect this situation?

To restrict access to the course for women on certain times and days is to discriminate on the basis of the protected characteristic of sex, and therefore is unlawful. Women and men must have equal access to the course and the current practice of restrictions for female members on Saturdays should be amended. Although women currently pay 80% of the full subscription rate in return for restricted access to the course, they currently have no other option, and therefore this practice is discriminatory. Men and women should pay the same fees as others in their membership category; the price they pay must not be determined by their sex. If a restricted category of membership is to be offered, it should be offered to both sexes.

Although a vote of current members may indicate a wish to maintain the status quo, clubs are not able to use a vote, however democratic, to circumvent the requirements of the Act.

There are many women who are deterred from choosing golf as a sport, or from joining a club because they are not provided equal access to the facilities at the weekend. In the current climate, many golf clubs have indicated that they have difficulty in filling membership spaces in general, and in particular with younger women. A change to a more equitable approach, affording women greater and fairer access to the course could assist in attracting women to golf who would previously been excluded by traditional access restrictions.

In order to help change this climate, junior female members should also be presented with the same opportunities as their peers, allowing them to play golf and progress their game. Junior females with an appropriate handicap should be allowed to compete in, and win, ladies' competitions, affording them the same opportunities as their male counterparts.

(H) The tee is reserved on approximately 50% of Saturdays during the year, and mainly in the months April to September, from 8am until 3pm for men's competitions. The starting list is fully booked for every competition on Saturdays, with many more men wishing to play, so we can't give women access on these days. The course is just too busy and the competition too popular.

(See '*Indirect Discrimination*' above for an example of why a club would have difficulty objectively justifying this practice).

It is not unlawful to reserve tees for competitions, but the wider context should be carefully considered. Does the reservation of the tee for men's competitions actually result in the course effectively being unavailable for women on Saturdays, even though the club rules state that both men and women have access to the course at any time?

It may be possible for the tee to be reserved for competition golf on certain Saturdays, which allows both men and women to play during this time, with men's and women's competitions running concurrently. The course restriction is therefore on the basis of entry to a competition, rather than sex.

(I) Are single-sex competitions no longer acceptable? Must both men and women play from the same tees and under the same competition conditions?

Clubs can organise separate sporting activities for men and women if they choose to where:

- physical strength, stamina or physique are major factors in determining success or failure, and
- one sex is generally at a disadvantage in comparison with the other.

Golf would appear to meet this criterion as a sport and therefore clubs may continue to separate golfing activities by gender.

However, it is worth noting that separate competition for girls and boys may not be permitted, depending on the age and stage of development of the children who will be competing. The earlier the age of the child, the more difficulty a club would have in justifying the separation of sporting activities on the basis of gender using the above criteria.

For clubs that are not associations and are simply service providers the criteria is the same except that the term "sporting activities" is replaced with "sporting competitions", this may indicate that narrower circumstances permitted for the separation of activities by sex.

(J) Ladies at a club want to join in the men's competitions.

For the reasons above the Act does not prevent the club separating sporting activities by gender. The ladies are unlikely to be able to claim discrimination on that basis alone.

That being said, if for example there is only 1 ladies/mixed competition for every 10 men's competition, or if there are factors which make the men's competitions significantly better than the ladies competition, then the ladies will be able to claim discrimination on the basis that the service they are receiving is inferior to that received by male members of the club.

(K) Our club prohibits the use of golf buggies in the winter because they cause damage to the course. Does this discriminate against those who need them to play?

See '*Failure to Provide Reasonable Adjustments to Disabled People*' above for the relevant example on this issue.

We have created some detailed guidance on how best to set up a golf course to allow the best possible access to your members. This guidance can be found by clicking on the Equality and Diversity page of the England Golf Website.

Transgender

Clubs must not restrict the participation of a transsexual person in such competitions unless this is strictly necessary to uphold fair or safe competition. In other words, the general rule is that a club should treat a transsexual person as belonging to the sex in which they present (as opposed to the physical sex they were born with).

'Equality in Sport' has provided detailed guidance on how to achieve the fair participation of transsexual people in non-contact sporting competitions which are separated by gender. This is reproduced at *Annex 1* below.

Membership

(L) Club rules state that women are only allowed to make up to a quarter of the total membership of the club.

This practice would not be considered lawful.

However, if all membership spaces were freely available to all, then there may be an erosion of the women's section altogether, or to very low levels, which would upset the balance of a healthy club and make the recruitment of new female members even more difficult. It therefore may be appropriate to allocate a minimum number of spaces to either gender. If a club is considering implementing such a measure they should seek legal advice on their specific circumstances to ensure that the policy is not discriminatory to either sex.

(M) Our club is a gentlemen's club where women are not admitted to any form of membership. Are we now required to admit women to the club?

No. Genuinely single-sex clubs are not affected by the Act and may continue to restrict their membership to one sex. However, if members of the opposite sex are permitted to join associate categories of membership or are invited as guests, then the club needs to comply with the Act.

This is because the Act allows for an association to limit its membership to people who share a protected characteristic, or to people who share a number of protected characteristics. A golf club could therefore just as lawfully limit its membership to people who are deaf, or people who are both male and Muslim.

This exception does not apply to a golf club which is purely a service provider and not an association (see '*Associations*' above for a definition). If a golf club who is a service provider only provides single sex services (i.e. does not allow members of the other sex to play at or join the club) the club must be able to **objectively justify** providing services in this way (see '*Indirect Discrimination*' above for the test for objective justification).

(N) Does the Act mean that the club may only have one category of membership?

No. The club can offer a variety of different membership options; it is just that the categories must not be determined on the basis of a protected characteristic.

However there are exceptions where fees may be reduced and other concessions given (see the list of exceptions above under '*Admission of Members and Guests*').

(O) The club has strict dress codes which differ between men and women. Must we change the codes to treat men and women the same?

Dress codes can be gender specific. Men and women conventionally wear different types of clothes, and therefore it would be difficult to draft a dress code which would accommodate these differences. However, to be consistent with the principles of equality, clubs should ensure that their codes do not result in inequalities that are significant. For example, it would likely be inequitable if men were made to wear a jacket and tie in the dining room after having played golf, but women were able to wear the clothes they have played golf in.

7 Conclusion

The Equality Act 2010 presents some challenges for clubs to address in order to ensure compliance, but there is a strong business case for approaching the process of change in a positive and proactive way.

In the current climate many golf clubs are experiencing difficulties in attracting new members and the introduction of the Act could provide the catalyst for a thorough examination of the benefits of membership that are being offered to potential customers. There are many reasons why women, disabled people and those from ethnic minority communities are not attracted to golf club membership, but some of these can be addressed with a more equitable approach and a different membership offer, which will enable clubs to attract members from new sectors. An open and inviting club may be more attractive to many potential members.

It is recommended that clubs communicate clearly with their members during the process of determining the changes necessary for compliance with the Act. If the members are aware of the constraints within which the club must operate, they may understand that some changes must take place, even though they may not welcome them. An open and honest discussion of the requirements of the Act may also provide innovative ideas.

Contacts and Further Guidance

More information about the Act in general terms may be found on the following sites:

The England Golf website contains information about Equality and Diversity, Development Initiatives and a range of other issues effecting clubs:

www.Englandgolf.org

Government Equalities Office

<https://www.gov.uk/government/organisations/government-equalities-office>

Equality Advisory Support

<https://www.gov.uk/equality-advisory-support-service>

Equality and Human Rights Commission

www.equalityhumanrights.com

- 'What equality law means for your association, club or society'
<https://www.equalityhumanrights.com/en/publication-download/what-equality-law-means-your-association-club-or-society>
- 'What equality law means for your business'
<https://www.equalityhumanrights.com/en/publication-download/what-equality-law-means-your-business>

The Equality Act 2010

<http://www.legislation.gov.uk/ukpga/2010/15/part/2>

Equality in Sport – Various publications

<http://equalityinsport.org/publications/>

www.mills-reeve.com T +44(0)344 880 2666

Mills & Reeve LLP is a limited liability partnership authorised and regulated by the Solicitors Regulation Authority and registered in England and Wales with registered number OC326165. Its registered office is at Monument Place, 24 Monument Street, London, EC3R 8AJ, which is the London office of Mills & Reeve LLP. A list of members may be inspected at any of the LLP's offices. The term "partner" is used to refer to a member of Mills & Reeve LLP.

The contents of this document are copyright © Mills & Reeve LLP. All rights reserved. This document contains general advice and comments only and therefore specific legal advice should be taken before reliance is placed upon it in any particular circumstances. Where hyperlinks are provided to third party websites, Mills & Reeve LLP is not responsible for the content of such sites.

Mills & Reeve LLP will process your personal data for its business and marketing activities fairly and lawfully in accordance with professional standards and the Data Protection Act 1998. If you do not wish to receive any marketing communications from Mills & Reeve LLP, please contact Suzannah Armstrong on 01603 693459 or email suzannah.armstrong@mills-reeve.com

Annex 1

(Extract from Equality Standard For Sport “*Transsexual People – Eligibility to Compete in Domestic Competition*”)

Non-Contact Sport

Affirmed Gender	Competition	Information	Process to determine eligibility
Any transsexual male (female-to-male transsexual person)	May compete in his affirmed gender in any male or mixed- sex domestic competition.	For non-contact sports there is a consensus that transsexual men and boys, even after a considerable period of time on testosterone therapy, do not usually have an unfair physical advantage over other men or boys, and therefore should be allowed to compete in male and/or mixed-sex domestic competitions as male.	Verification of identity should be no more than is required of any other player e.g. passport, driving licence.
Transsexual woman – over 16 and post-puberty (male-to-female transsexual person)	May compete in her affirmed gender in female or mixed-sex domestic competition by providing evidence that her hormone therapy has brought her blood-measured testosterone levels within the range of her affirmed gender or that she has had a gonadectomy Or She may compete in any male or mixed- sex competition if she has not started hormone treatment.	Policy options for transsexual women focus on the physical advantage, real or perceived, of transsexual women over other women (birth sex) as well as the safety of competitors. After the age of 16 transsexual women can receive cross-sex hormones, which can alter a person's body to further fit with their gender identity. The effects of these hormones are only partially reversible so they are not offered to people under the age of 16. Once a person reaches the age of 18 they can then begin the process of gender confirmation surgery e.g. gonadectomy which results in no further production of male hormones. Not all transsexual women choose, or are able, to undergo gender confirmation surgery. For female or mixed-sex domestic competitions a transsexual woman should only need to demonstrate that hormone therapy has	It must be made clear to the transsexual woman or girl that she is not entitled to play in female or mixed-sex domestic competitions in her affirmed gender until such time as she has provided evidence that the criteria set out by the NGB have been met to its satisfaction. The transsexual woman (and her legal guardian if under 18) should be asked to: • Disclose sufficient information from her GP and/or Consultant to the NGB (and any other information, records or other material as the NGB may require from time to time) to allow it to ascertain that hormone therapy has been administered in a verifiable manner or the date of her gonadectomy and that a medical representative deems that this has minimised any gender-related advantages in competitions.

Affirmed Gender	Competition	Information	Process to determine eligibility
		<p>minimised any gender-related advantage that she may have previously had. This would reduce any risk of injury to other competitors to a level that is compatible with competitions where all competitors were birth sex female.</p> <p>The minimising of any gender- related advantage either through hormone therapy or following gonadectomy should be the only necessary criteria for inclusion.</p>	<ul style="list-style-type: none"> • This information will need to demonstrate that the hormone treatment will have reduced her blood-measured testosterone level to that of the affirmed gender for an appropriate length of time and that this is in line with any anti- doping regulations. • Hormone-related treatment must be verified annually to ensure its validity. • The NGB should also be permitted to refer back to the GP and/or Consultant to clarify or verify any details. This will ensure that the transsexual person is managing the information that is shared with the NGB and will assist in ensuring the individual's right to privacy. Verification of identity should be no more than is required of any other player e.g. passport, driving licence.
<p>Transsexual girl – under 16 and post- puberty</p>	<p>Either she may compete in her affirmed gender in any female or mixed- sex domestic competition subject to an individual case- by-case review, if required, undertaken by the NGB</p> <p>Or</p> <p>She may compete in any male or mixed- sex competition if she has not started hormone treatment.</p>	<p>Transsexual girls under 16 and post- puberty should be considered on an individual case- by-case basis as there can be considerable differences in their strength and status. In addition this is a key group who may drop out of sport and any action the NGB can take to encourage people to stay in sport should be considered.</p> <p>Some of the reasons that need to be considered include that the transsexual girl:</p> <ul style="list-style-type: none"> • May or may not have received treatment to interrupt pubertal development by blocking the production of gonadal hormones; while this is now more widely available in the UK it doesn't appear to be widespread. • May or may not have taken oestrogen (usually around 16 years old). <p>Has a physique that may or may not be more muscular than the average girl.</p>	<p>It must be made clear to the transsexual girl that she is not entitled to play in female or mixed-sex domestic competitions in her affirmed gender until such time as she has provided evidence that the criteria set out by the NGB have been met to its satisfaction.</p> <p>The transsexual girl and her legal guardian should be asked to permit the NGB to undertake an individual case-by- case review. This will involve a review meeting with the transsexual girl, her advocate (e.g. parent, social worker, rep from a LGBT young people's group such as Intercom in the South West) and a rep from the NGB. Their role will be to agree a way forward for the young person based on her individual circumstances and to manage everybody's expectations with due consideration to fairness and safety.</p> <p>Verification of identity should be no more than is required of any other player e.g. passport.</p>
<p>Transsexual girl – pre- puberty</p>	<p>May compete in her affirmed gender in any female or mixed- sex domestic competition subject to confirmation of her stage of pubertal development.</p>	<p>A transsexual girl who is pre- puberty will have no gender- related advantage as she will largely have escaped the virilising effects of testosterone on her adolescent development; the risk of injury to competitors would be minimal and would be compatible with competitions where all competitors were birth sex female.</p> <p>Any transsexual girl who is pre- puberty should be allowed to compete in any female or mixed competition (as female) subject to</p>	<p>It must be made clear to the transsexual girl that she is not entitled to play in female, domestic competitions in her affirmed gender until such time as she has provided evidence that the criteria set out by the NGB have been met to its satisfaction.</p> <p>The transsexual girl and her legal guardian should be asked to:</p> <ul style="list-style-type: none"> • Disclose sufficient information from her GP and/or Consultant to the NGB (and

Affirmed Gender	Competition	Information	Process to determine eligibility
		the provision of information about her stage of pubertal development.	<p>any other information, records or other material as the NGB may require from time to time) to allow it to ascertain the stage of pubertal development that the girl has reached.</p> <ul style="list-style-type: none"> • This is subject to an annual review. • The NGB should also be permitted to refer back to the GP and/or Consultant to clarify or verify any details. This will ensure that the transsexual person is managing the information that is shared with the NGB and will assist in ensuring the individual's right to privacy. <p>Verification of identity should be no more than is required of any other player e.g. passport.</p>