

## **CHAPTER 13 – DIVERSITY & EQUAL OPPORTUNITIES**

### **Introduction**

Diversity is relevant and specific to everyone. There are no two people in the world who are identical; everyone is different with differing needs. Individuals should be valued and respected because they are different not because they seem to be like everyone else. Diversity is therefore about embracing and valuing differences between people. Visible and non-visible differences such as race, ethnicity, culture, gender, ability, class and educational background, sexual orientation, marital status, religious and other beliefs, age and financial means may lead to individuals, groups or communities being subjected to prejudice, discrimination and harassment.

### **DIVERSITY IS ABOUT:**

- welcoming and valuing the mix of skills, experiences and backgrounds that a diverse workforce brings to an organisation and its ability to provide services within the community;
- ensuring that no one job applicant, employee or member of the public receives less favourable treatment than another as a result of their gender, marital status, ethnic group, colour, nationality, age, disability, sexual orientation, religious belief or trade union membership;
- basing decisions taken within the Trust on objective, job-related criteria;
- appointing and promoting on merit;
- understanding that we are all individuals and that any differences between people should be respected, not used as a reason for isolating, humiliating, ignoring or belittling another;
- treating people as you would wish to be treated by others;
- recognising that everyone at work, and in the community, is entitled to be treated with dignity and respect;
- creating a working environment where problems and complaints are much less likely to be generated;
- making sure that all staff can feel able to do their job to the best of their ability, and as part of a team, without having to contend with unfair treatment and offensive behaviour such as racial harassment, sexual harassment, bullying, etc.

## **GLOSSARY OF TERMS**

### **Age Discrimination**

The Employment Equality (Age) Regulations 2006 make it unlawful to discriminate against, directly or indirectly, or to harass, workers on grounds of their age, or their assumed age, in the fields of employment and vocational training, but not in relation to the provision of goods, facilities and services. Under the Regulations it is unlawful for an employer to treat someone less favourably on grounds of their age in terms of: employment; dismissal; offering training; promotion; terms and conditions and redundancy, without objective justification.

It is unlawful to retire someone on grounds of their age, without objective justification, before the employer's normal retirement age. If an employer has no set retirement age, the default retirement age set by the Regulations is 65. An employer wishing to work beyond retirement age can appeal in writing, but the employer can refuse, and does not have a legal duty to justify their refusal.

### **Ageism and Harassment on the Grounds of Age**

Ageism is the assumption that people above or below a certain age are inferior or less capable. Such assumptions lead to discrimination against individuals on the basis of their age. Ageism can further lead to individuals at work being harassed because of their age.

The Employment Equality (Age) Regulations 2006 define harassment on the grounds of age as “*unwanted conduct by one person, which has the purpose or effect of violating another's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of that other's age*”. The sorts of stereotypical conduct, comment or banter that associate older people with incompetence, ill-health or inability to cope with technology and/or change may be included. Likewise, conduct or comments that associate younger workers with unreliability, irresponsibility and requiring excessive supervision may fall foul of this definition.

### **Agenda for Change?**

Agenda for Change seeks to deliver extensively as far as equal opportunities and diversity is concerned. AfC policies relating to this can be found in Sections 9, 31, 32, 33, 34 and 35 of the Agenda for Change: NHS Terms and Conditions of Service which can be downloaded from [http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH\\_4095947](http://www.dh.gov.uk/en/Publicationsandstatistics/Publications/PublicationsPolicyAndGuidance/DH_4095947)

## **Black**

Black is the word used by many people of African-Caribbean and Asian origins to describe themselves. For black people who have adopted it, it is a term which underlines a unity of experience in Britain and overseas of those whose skin colour is not white. At the same time, there are many people from minority ethnic communities in the UK who do not identify themselves as “*black*”. Additionally, there are others who may not be regarded by others as “*black*”. Yet, because of differences between themselves and those in the majority within society (relating to their ethnic origin, language, culture or religious beliefs), they share a common experience with black people of hostility, discrimination and inequality (e.g. Jewish and Irish people).

It is also recognised that there is no single term acceptable to everyone, and that language is not static. Individuals should be able to define their own ethnic group, and not have it imposed upon them.

## **Bullying**

The following is a generally accepted definition of bullying provided by ACAS. *Offensive,” intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient”.*

Bullying can take many forms, including: intimidation, humiliation, belittlement, isolation, exclusion, ridicule at work, questioning of professional competence, withholding information, refusing reasonable requests, excessive supervision, overruling authority, setting impossible objectives/targets, excessive/unwarranted criticism, changing work remits without advising the person concerned and spreading malicious rumours.

At present there is no specific law which deals with bullying at work. However there is law which may be appropriate depending on the circumstances of the individual making a complaint. The Health and Safety at Work Act 1974 (Section 2 (1)) places a duty on every employer to ensure the health, safety and welfare of all their employees. Regulation 3 of the Management of Health and Safety at Work Regulations 1999, places a legal duty on employers to make a suitable and sufficient assessment of the risks to the health, safety and welfare of employees so that preventative and protective measures can be taken. The extent to which bullying exists in a workplace should be covered in such a risk assessment.

In employment law, the employer has a duty to prevent unlawful discrimination. Where bullying is based on gender, gender reassignment, race, disability, sexual orientation, age, religion/belief it may be unlawful discrimination. Employers have a general duty of care under contract law. If bullying leads to a fundamental breach of the employment contract an employee, with at least 1 year’s service, may be able to claim constructive or unfair dismissal under the Employment Rights Act of 1996.

## **Burden of Proof**

In all of the anti-discrimination legislation the burden of proof in the employment courts resides chiefly with the employer as the following highlights. *“Where the complainant proves facts from which the Tribunal could conclude in the absence of an adequate explanation that the respondent has committed an act of discrimination or harassment against the complainant or is to be treated as having committed such an act by virtue of the principles of employer liability, the Tribunal shall uphold the complaint, unless the respondent provides that he did not commit that act.”*

This means that once a person making a complaint of discrimination has made a prima facie case (where the ET could infer that it is more likely than less likely that in such circumstances discrimination or harassment did occur) it is for the employer to prove that they did not commit the act, knowingly or otherwise. This is a shift from the previous position under the SDA and RRA, where in the past once the complainant had made out a prima facie case, there was held to be no defence and the courts were entitled that discrimination had taken place.

## **Discrimination**

While prejudice is about people’s attitudes, ideas, views, feelings or opinions, discrimination is about people’s actions or language - in other words - their behaviour. Discrimination is often defined as “prejudice + power”.

Discrimination is treating people differently and less favourably (deliberately or not) because of their gender, marital status, gender reassignment, race, colour, nationality, disability, sexual orientation, age, religion/belief or for reasons related to pregnancy, than they would otherwise have been treated. Discrimination includes taking decisions about others based on personal prejudice, or acting upon prejudice. For example, failing to offer a post to a woman, even where she is the best candidate on merit, because the person taking the decision feels a woman would not be suitable for the post.

Discrimination based on gender, marital status or gender reassignment (sex discrimination); race, colour, ethnic group, nationality or national origins (race discrimination), sexual orientation, religion/belief, age and disability is unlawful. These types of discrimination are covered by the following legislation:

- the Sex Discrimination Act (SDA), 1975
- the Sex Discrimination Regulations, 1999 (relating to discrimination against those who have undergone gender reassignment)
- the Employment Equality (Sex Discrimination) Regulations, 2005
- the Race Relations Act (RRA), 1976
- the Race Relations (Amendment) Acts, 2000 and 2003
- the Employment Equality (Sexual Orientation) Regulations 2003

- the Employment Equality (Religion or Belief) Regulations 2003
- the Disability Discrimination Act (DDA), 1995;
- the Disability Discrimination (Amendment) Regulations, 2003
- the Disability Discrimination Act, 2005;
- the Employment Equality (Age) Regulations 2006;
- the Equalities Act, 2006.

Under the SDA, the RRA, the Employment Equality (Sexual Orientation) Regulations, the Employment Equality (Religion or Belief) Regulations and the Employment Equality (Age) Regulations discrimination can be direct or indirect.

- **Direct Discrimination** occurs where a person is able to prove that they were treated less favourably than a person of the opposite sex, of a different ethnic group, sexual orientation, age, a different religion/belief or following gender reassignment treatment would have been treated in the same or similar circumstances, and that they suffered what in law is called “*a detriment*” (a personal disadvantage) as a result.
- The complainant must prove that had they not been of their own gender, ethnic group, sexual orientation or religion/belief they would have been treated differently. The over-riding reason for the different treatment is their gender, ethnic group, sexual orientation, age or religion/belief. If proven, different treatment is unlawful, unless the employer can prove the reasons for the treatment were unrelated to an individual’s race, gender, sexual orientation, age religion/belief. If they cannot, direct discrimination is always unlawful.
- **Indirect Discrimination** is where an apparently neutral provision, criterion or practice is applied (formally or informally) to a post, which has a considerably greater – and detrimental – effect on an individual as a result of their gender, gender reassignment, race, religion, sexual orientation or age and which cannot be justified by the employer. As a result, because of their race, gender, gender reassignment, age, sexual orientation or religion/belief the individual is less likely to be able to comply with the provision, criterion or practice and so will not be appointed or promoted. In an ET, the employer would have to demonstrate that the provision, criterion or practice concerned “*is a proportionate means of achieving a legitimate business aim*”.
- **Disability Discrimination.** Under the DDA discrimination is defined as follows. “*An employer discriminates if, for a reason which relates to a person’s disability, they (the employer) treat the disabled person less favourably than they treat, or would treat, others who do not have a disability; and the employer cannot show that the treatment in question is justified.*”

- In law, an employer has a legal duty to make reasonable adjustments to the job or the workplace in order to ensure an employee or applicant is able to carry out the duties of the post effectively.

If an individual feels they have a claim of unlawful discrimination they should lodge a complaint (form ET1) with an Employment Tribunal (ET) within 3 months of the alleged act(s) of discrimination occurring.

## **Disability**

The DDA gives the following definition of disability. *“A person has a disability for the purposes of the Act if he or she has a physical or mental impairment which has a substantial and long term adverse effect on his or her ability to carry out normal day to day activities.”* “Long term” has been defined as a condition which has lasted 12 months, or which doctors confirm is expected to last at least 12 months. Mental impairment which is the result of alcohol or drug abuse, and personality disorders, are specifically excluded from the definition within the Act.

Discrimination against disabled people is based on the assumption that everyone is physically and mentally able. Hence no thought is given to the ways in which disabled people may be affected by the layout of the workplace, the way a job is designed or the attitudes and behaviour of those around them. Disability discrimination also occurs when assumptions are made about the capability of a person to do a particular job of work. This can lead to stereotypes being applied which have the affect of excluding or belittling disabled people.

## **Disability Harassment**

Disability harassment is conduct imposed on another person because of a physical or mental impairment. It is unwanted, unreciprocated and regarded as offensive by the recipient. It can take many forms, including:

- making offensive comments about the nature of an individual’s disability;
- telling jokes about disability generally or about an individual’s disability;
- belittling a disabled person in front of others;
- isolating or ignoring people because of their disability;
- using unacceptable terminology to describe a disabled individual. For example ‘cripple’, ‘handicapped’, ‘retarded’, ‘defective’ and ‘spastic’.

The Disability Discrimination (Amendment) Regulations 2003 give workers the statutory right not to be harassed because of their disability. The Regulations define Disability Harassment as: *unwanted conduct by one person, which has the purpose or effect of violating another’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of that other’s disability.*

## **Equal Opportunities Policy**

An Equal Opportunities Policy is a collective agreement which aims to ensure that no employee, job applicant or member of the public is discriminated against, or subject to harassment or bullying. Such a policy is a means of generating a greater understanding of equality issues among staff and managers and aims to prevent individuals at work being subject to attitudes and behaviour that are offensive and unacceptable, or to being exposed to institutionalised discrimination. An Equal Opportunities Policy may commit an organisation to positive action and to monitoring the make-up of the workforce (by gender, race, disability, etc) to identify the extent to which the policy is working.

Organisations should also have a Dignity at Work Policy, providing a complaints procedure (separate from the organisation's Grievance Procedure) that individuals may use if they feel they have been subject to behaviour that could constitute bullying and/or harassment.

In their Codes of Practice the Equal Opportunities Commission and the Commission for Racial Equality recommend that where trade unions are recognised by an organisation, they should be involved in the drafting and monitoring of their Equal Opportunities policy.

## **Equal Pay**

The law on equal pay is based on the concept of sex discrimination and is derived from Article 141 of the Treaty of Rome, which guarantees women and men at work equal pay and equal treatment. The Equal Pay Act 1970 outlaws differential pay for women and men when they work for the same employer to carry out the same or broadly similar work for an employer.

The Equal Pay for Work of Equal Value Amendment 1983 amended the Equal Pay Act, providing a legal means of seeking higher pay when a woman (or a man) is able to prove that the work they carry out for their employer is of equal value to that done by someone of the gender working for the same organisation, even if the other person is employed to carry out entirely different work. To date only women claimants have used the law successfully.

The Equal Pay (Amendment) Regulations 2003 increase the time limit for back pay in successful claims from 2 years to 6 years in England and Wales and 5 years in Scotland. The Regulations modify the procedure for bringing equal value claims by giving ET's greater powers to disregard the findings of an employer's job evaluation scheme. An ET is entitled to disregard a job evaluation that gives different values to men and women's work, if the ET believes the job evaluation scheme itself is potentially sex discriminatory in its analysis of jobs. The 2003 Amendment provides claimants with the right to issue an Equal Pay Questionnaire to their employer in order to collate evidence of differential pay rates within the organisation.

## **Family Friendly Rights**

The Employment Relations Act 1999 provides 13 weeks' Parental Leave for each child up to its 5<sup>th</sup> birthday (or 18<sup>th</sup> birthday for a child with a disability), after 1 year's service. Also provided is the right to time off for Dependency Leave, such as dealing with childcare crises, bereavement and domestic emergencies (no qualifying period). There is no legal right to paid time off.

***The Maternity and Parental Leave etc Regulations 2006*** increase paid maternity leave from 26 to 39 weeks. Additionally, the Paternity and Adoption Leave (Amendment) Regulations 2006 entitles fathers to 2 weeks' paid paternity leave. There is a legal right to 52 weeks' adoption leave, the first 39 weeks of which is paid, followed by a further 13 weeks' unpaid leave. Adoption leave is available to those adopting children up to 18 years of age, but does not cover foster carers or those adopting step-children. The qualification period for these rights is 26 weeks' continuous employment.

The Employment Act 2002 introduced the statutory right to request flexible working, which an employer may not unreasonably refuse. This right is open to parents, with at least 26 weeks' continuous service, (including guardians and adoptive parents) of children up to the age of 6 (or 18 if the child is disabled). An employer who refuses has a duty to show their refusal is "*reasonable*" and that there are strong business reasons for their decision. Where an employee believes their employer's refusal is unreasonable they will be entitled to make a complaint to an ET within 3 months.

The Maternity and Parental Leave etc Regulations 2006 and the Paternity and Adoption Leave (Amendment) Regulations 2006 implement some of the provisions of the Work and Families Act 2006. The most significant change is the removal of the length of service condition for women to qualify for additional maternity leave. All women now qualify for 1 year's maternity leave. The period of SMP is extended from 26 to 39 weeks, meaning that those who qualify for SMP will receive it for 9 of the 12 months' leave they are entitled to around the their child's birth. Parents who adopt a child benefit from changes to Statutory Adoption Pay (SAP). Adoption leave is increased to 52 weeks, 39 weeks with pay.

The Regulations introduce '*keeping in touch*' days, enabling employees on maternity or adoption leave to work for up to 10 days' for their employer, except in the first 2 weeks after childbirth, without ending that leave. The 10 days will form part of the maternity or adoption leave period, they will not extend it. Importantly, employees will retain their right to receive SMP/SAP for these days, or their contractual pay if higher. At present, a woman on maternity leave, who comes into work for a day, loses her SMP for that week. There is no legal obligation for the employee to go into work for the 10 days and an employer cannot force an employee to come into work.

The Work and Families Act 2006 extends, from 1<sup>st</sup> April 2007, the right to request flexible working to carers. The DTI has defined '*carers*' as "*an employee who is or expects to be caring for an adult who:*

- *is married to, or the partner or civil partner of, the employee; or*
- *is a near relative of the employee; or*
- *falls into neither category, but lives at the same address as the employee.”*

*'Near relatives'* include parents, siblings (including in-laws), adult children, uncles, aunts, grandparents and step-relatives. The right enables employees to request changes in their working patterns to care for an adult. The employer must *'seriously consider'* any such request and can only reject it for a good *'business reason'*, as specified in Section 80G of the ERA'96.

### **Gender Reassignment**

A transgendered, or transsexual, person has a condition called *'gender dysphoria'*, which means the physical sex characteristics they were born with are wrong for them. Many transgendered people wish to live in the gender with which they identify and they are entitled to do so by law. Some transgendered people undergo gender reassignment treatment, which involves hormone therapy and may mean undergoing surgical procedures to alter their gender.

The Sex Discrimination (Gender Reassignment) Regulations 1999 amend the SDA 1975 by inserting a new section 2A making it unlawful to treat a person less favourably on the grounds that they intend to undergo, are undergoing or have undergone gender reassignment. This is defined as *"a process undertaken under medical supervision for the purpose of reassigning a person's sex by changing physiological or other characteristics of sex, and includes any such part of such a process"*. The Employment Equality (Sex Discrimination) Regulations 2005 prohibit harassment due to a person's gender reassignment.

The right not to be discriminated against, or harassed, applies fully once the individual is post-operative. In a pre-operative phase individuals have to undergo a *'real life test'*. This involves living as their new sex. During that time employers are obliged to take some steps to treat them as if they were already in their new sex (e.g. make arrangements for an employee to use the disabled persons' toilet rather than the women's toilets) during the temporary period prior to gender reassignment having been concluded. A post-operative transgendered person has all the employment rights available to their new sex, including any state benefits.

### **Heterosexism**

Heterosexism is an ideology and set of practices based on a belief – conscious or otherwise – that heterosexuality (sexual and emotional attraction to people of the opposite sex) is the “natural” form of sexuality for both women and men and that therefore homosexuality is “deviant”. As a result a rationale is provided for on-going institutional and personal prejudice and discrimination against lesbians, bisexuals and gay men. This can include homophobia - the fear of lesbians, bisexuals and gay men and the fear of

these feelings in oneself. The Employment Equality (Sexual Orientation) Regulations 2003 outlaw discrimination on the grounds of sexual orientation, or assumed sexual orientation.

### **Oppression**

Oppression is the process by which institutions, groups or individuals with power, either given or achieved, discriminate against those with less or no power. Oppression may be conscious or unconscious. This power difference is used to limit the lives and opportunities of oppressed people economically, socially and/or physically. In extreme circumstances oppression may be life threatening.

### **Part-Time Working**

The Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000 define part-time workers as those who work fewer than 30 hours a week or those working fewer than the standard hours for that particular workplace. The Regulations provide some level of protection from discrimination for part-time workers, 90% of whom in the UK are women. The Regulations provide for the right:

- of part-time workers not to be treated less favourably than their full-time counterparts;
- to pro-rata terms and conditions of employment to full-time counterparts;
- to a written statement of reasons for less favourable treatment;
- and to make a complaint of alleged less favourable treatment to an ET.

The Employment Act 2002 and the Work and Families Act 2006 give employees (after 6 months' service) who are parents of children under the age of 6 (18 where a child has a disability), or who care for adults, the right to request to flexible working. An employer may not "*unreasonably refuse*". If a refusal is considered to be unreasonable, a worker has the right to complain to an ET within 3 months.

### **Pregnancy-Related Discrimination**

Under the terms of the **Sex Discrimination Regulations 2005**, which amend the Sex Discrimination Act 1975, discrimination of a woman on the grounds of pregnancy, or for pregnancy-related reasons, is unlawful. The *Organisation* is committed to fair treatment of all staff, and will ensure that any alleged discrimination against a pregnant member of staff, or applicant, is treated seriously.

### **Positive Action**

Anti-discrimination legislation encourages employers to take positive action, by regularly monitoring their workforces by gender, age, ethnic group or disability. The aim of this process is to identify the extent to which the workforce in question mirrors the

community outside the workplace. If there is a shortfall of employees in terms of, for example, gender, a particular ethnic group or those who are disabled, then employers are expected to introduce positive action measures to try to redress the imbalance.

Positive action measures may be used by an employer to encourage people from under-represented groups in the workforce to apply for posts, and to ensure that when applying they have a clear understanding of what these posts entail. Once those from under-represented groups have applied, however, they must – in law – be treated the same as all other applicants. Appointment must be made on merit and the most suitable person – according to the job criteria – selected. Appointing an individual chiefly because of their race or gender, etc. would be unlawful positive discrimination.

Positive action measures include ensuring that adverts for jobs are located in publications and places where members of under-represented groups are more likely to see them and wording adverts so that they encourage applications from all sections of the community to apply.

### **Positive Discrimination**

Positive discrimination is not the same as positive action. Positive discrimination means appointing or promoting people to posts mainly because of their gender, race, disability, sexual orientation, religion/belief or age and not because they are considered to be the most suitable candidate on merit. If it could be proved, for example, that a woman was appointed chiefly because of her gender (for instance to improve the company's public image) a male applicant, who felt he was better qualified for the job, could bring a claim of direct sex discrimination under the SDA to an ET.

Under the discrimination legislation positive discrimination is unlawful. However, the ECJ has adjudged that positive discrimination in some circumstances may be permissible under the terms of the EU Equal Treatment Directive 1976. The ECJ held that it is lawful to give preference to a woman candidate, even though there is an equally qualified male candidate, if this forms part of an equality policy to address existing imbalances between the sexes.

### **Prejudice**

Prejudice is an opinion or belief which is not based on fact or reason. It can be negative or positive. In the context of equal opportunities it usually implies an irrational dislike or unfavourable opinion of people identified with a particular group. Prejudice can lead people to hold views about others based on assumptions, rumours, generalisations or stereotypes. In other words, people are not seen as individuals, but as belonging to a "type", regardless of their personal characteristics, capabilities, skills and suitability. We may assume that everyone of a particular type will be the same, even if we know nothing about the individual we are assessing. If this "type" of person is perceived as being unacceptable, they are more likely to be treated in a manner that is unfair or offensive to them.

The Race Relations (Amendment) Regulations 2003 gave workers the statutory right not to be harassed because of their race, colour, ethnic group, nationality or national origins. The Regulations define Racial Harassment as “*unwanted conduct by one person, which has the purpose or effect of violating another’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of that other’s race, colour, ethnic group, nationality or national origins*”.

## **Racism**

This refers to prejudiced beliefs and behaviour relating to the race, colour, cultural ethnic background or nationality of others. Usually this refers to attitudes and discriminatory action against black people or those of a different nationality, and is based on the assumption that white people or “the British” are superior and more capable. An individual who holds racially prejudiced views and/or acts in a racially discriminatory manner is a racist.

## **Racial Harassment**

Racial harassment can involve relations between workers or unfair decisions and procedures being used by the employer or a manager. It can be unwelcome comments, name-calling, racist abuse and jokes, the display of racially offensive graffiti, physical attack, threatened assault, shunning or isolating workers on the grounds of their colour or nationality, insulting or abusive behaviour and gestures.

Management action may include unfair division of responsibility, denying a black person access to benefits such as training and overtime, disproportionate use of disciplinary action against black workers or a refusal to investigate complaints of racial discrimination or harassment.

## **Institutionalised Racism**

A formal definition of institutional racism was provided in 1999 by the Macpherson Report following the racist murder of black London teenager Stephen Lawrence. Institutionalised racism is defined as follows. “*The collective failure of an organisation to provide an appropriate and professional service to people because of their colour, culture or ethnic origin. It can be seen or detected in processes, attitudes and behaviour which amount to discrimination through unwitting prejudice, ignorance, thoughtlessness and racist stereotyping which disadvantage minority ethnic people.*”

The 1976 Race Relations Act was amended by the Race Relations (Amendment) Act 2000, which places a duty on public organisations to promote race equality. Such organisations have a further duty not to discriminate either directly or indirectly in carrying out any of their functions. The inclusion of a ban on indirect discrimination is

important, because it is aimed at challenging institutionalised discrimination based on organisational cultures. The Act has a particular impact on the NHS.

### **Religion or Belief**

The Employment Equality (Religion or Belief) Regulations 2003 make it unlawful to discriminate directly or indirectly against workers on the grounds of their religion or religious or philosophical belief, or on the basis of their assumed religion or religious or philosophical belief, in terms of employment, vocational training, the provision of goods, facilities and services, premises, education and the exercise of public duties (Equalities Act 2006). Religion or belief is defined as any religion, religious belief or similar philosophical belief. This does not include any philosophical or political belief, unless it is similar to religious belief. It will be for the employment courts to decide as cases are brought to law to decide whether particular circumstances are covered by the Regulations.

This is an important piece of law, in terms of protecting workers from discriminatory treatment related to their religion, belief or lack of belief. According to the 2001 census, more than 75% of the UK population has a religious belief. Although Christianity is the most popular religion, there are a wide range of religions, as the following figures from the census show: Christians – 42,000,000; Muslims – 1,590,000; Hindus – 559,000; Sikhs – 336,000; Jews – 267,000; Buddhists – 152,000; Other – 179,000; and significantly those with no religion – 9,100,000.

### **Harassment on the Grounds of Religion or Belief**

The Employment Equality (Religion or Belief) Regulations 2003 give workers the statutory right not to be harassed because of their religion or religious or philosophical belief, or assumed religion or religious or philosophical belief. The Regulations define harassment on the grounds of religion or belief as *“unwanted conduct by one person, which has the purpose or effect of violating another’s dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of that other’s religion or belief, or assumed religion or belief”*.

### **Sexism**

This refers to prejudiced beliefs and behaviour based on such prejudice relating to the gender of others. Usually this refers to attitudes and discriminatory action against women, and is based on the assumption that women are inferior or less capable than men. An individual who holds prejudicial views against, or acts in a discriminatory manner towards, someone of the other gender is a sexist.

### **Sexual Harassment**

Sexual harassment is conduct which is imposed on another person because of their gender. It is unwanted, unreciprocated and regarded as offensive by the recipient. It can take many forms, including: physical contact, from unnecessary touching to sexual assault and rape; suggestive remarks or jokes, sexual propositions, unwanted comments on dress and appearance; verbal abuse of a sexual nature; leering, displaying pornographic pictures or pin-ups and making suggestive gestures; ignoring, isolating or humiliating someone because of their gender or gender-realignment.

There is a difference between “*having a laugh*” with workmates, which both parties enter into and enjoy, and sexual harassment. The latter is unwanted by, and offensive to, the person on the receiving end. Whether or not the harasser intended to be offensive is, in law, irrelevant. The intention does not matter; it’s the affect on the individual that is paramount.

The Employment Equality (Sex Discrimination) Regulations 2005 expressly define sexual harassment thus:

*“4A (1) For the purposes of this Act, a person subjects a woman to harassment if:  
(a) on the ground of her sex, he engages in unwanted conduct that has the purpose or effect of*

- (i) of violating her dignity, or*
- (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her,*

*(b) he engages in any form of unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of*

- (i) of violating her dignity or*
- (ii) of creating an intimidating, hostile, degrading, humiliating or offensive environment for her, or*

*(c) on the ground of her rejection of or submission to unwanted conduct of a kind mentioned in paragraph (a) or (b) he treats her less favourably than he would treat her had she not rejected, submitted to, the conduct.*

*4A(2) Conduct shall be regarded as having the effect mentioned in sub-paragraph (I) or (ii) of subsection (1)(a) or (b) only if, having regard to all the circumstances, including in particular the perception of the woman, it should reasonably be considered as having that effect.”*

### **Sexual Orientation**

The Employment Equality (Sexual Orientation) Regulations 2003 make it unlawful to discriminate, directly or indirectly, against workers on the grounds of their sexual orientation, or assumed sexual orientation, in terms of employment, vocational training, in the provision of goods, facilities and services (Equalities Act 2006). In law, sexual orientation is defined as:

- orientation towards persons of the same sex (gay or lesbian);
- orientation towards persons of the opposite sex (heterosexual); and
- orientation towards persons of the same and the opposite sex (bisexual).

### **Harassment on the Grounds of Sexual Orientation**

The *Employment Equality (Sexual Orientation) Regulations 2003* give workers the statutory right not to be harassed because of their sexual orientation, or their assumed sexual orientation. The Regulations define harassment on the grounds of sexual orientation as *unwanted conduct by one person, which has the purpose or effect of violating another's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment because of that other's sexual orientation, or assumed sexual orientation.*

### **Discrimination on Grounds of Trade Union Membership/Activity**

Dismissal or action short of dismissal by an employer resulting from an individual's trade union membership, activity or non-membership would be a breach of the Trade Union and Labour Relations (Consolidation) Act, 1992 and the Employment Relations Act 1999.

### **Vicarious Liability**

In discrimination law, employers may be adjudged to be vicariously liable for any proven discrimination or harassment that breaches the legislation. The employing organisation is automatically responsible for discrimination against one staff member by another. This is so even when the top people in the organisation did not know what their more junior managers or staff were doing. The only possible defence open to employers is to argue that the organisation had taken all reasonably practicable steps to prevent discrimination occurring. In practice, few employers have successfully used this defence, since they would have to have proved that they operated such an active equal opportunities policy that they could reasonably believe all their employees understood their duty not to offend under the anti-discrimination laws and that those who chose to do so knew that this was unacceptable to the organisation. Only a handful of employers have used this defence successfully

### **Victimisation**

It is unlawful to treat a person less favourably than others would be treated because that person has asserted, or intends to assert, their statutory rights under any of the discrimination legislation, or by giving evidence or information in connection with such proceedings. This includes complaints dealt with in the workplace through the disciplinary or grievance procedures, as well as through an Employment Tribunal.

### **‘Whistle Blowing’**

Under the **Public Interest (Disclosure) Act 1998** a member of staff who “blows the whistle” on their employer’s criminal or fraudulent activities has protection against victimisation.

### **Xenophobia**

Xenophobia is literally “*a fear of strangers*”. It is used to denote the dislike and distrust felt and/or expressed by the indigenous population towards people from abroad. This fear or dislike may be based on an assumption that those who are not British are inferior or less intelligent. Like all prejudices, xenophobia is not based on rationality or fact and it can lead to individuals being unfairly treated at work and in the community.

## **EQUAL OPPORTUNITIES – A MODEL POLICY**

### Introduction

The Organisation recognises the importance of equal opportunities for all its personnel, prospective employees and clients/customers/service users. This policy has been developed in consultation with the recognised trade union(s). It sets out the framework for the provision of equal opportunities in employment and the elimination of unlawful, unfair and inappropriate discrimination at work.

The Organisation and the trade union(s) recognise that the promotion of equal access to employment opportunities is of benefit to the Organisation, by ensuring contact with the widest possible employment market, and to employees and job applicants by allowing fair competition for employment opportunities on the basis of merit.

This policy is supported by other associated policies and procedures dealing in detail with aspects of the Organisation's employment practices.

### General Statement of Policy

The Organisation is an equal opportunities employer and will prevent discrimination, particularly on the grounds of gender, marital status, gender reassignment, disability, race, colour, ethnic group, national origins, nationality, religion/belief, sexual orientation, age, pregnancy and trade union membership/activity.

This policy acknowledges the validity of current anti-discrimination legislation and a number of codes of practice applying in the employment field and will apply these to all the Organisation's employees and prospective employees. The policy aims to:

- (a) promote equality of opportunity in employment;
- (b) eliminate discrimination, harassment and bullying in employment;
- (c) provide positive action measures where appropriate and where not prohibited by legislation;
- (d) apply relevant supportive employment procedures and practices;
- (e) develop appropriate training programmes.

To achieve such aims, the Organisation is committed to an immediate and on-going programme of action and will make available resources to ensure the full and effective implementation of this policy.

### Statement of Policy Relating to Disability

The Organisation deplores and opposes disability discrimination in all its forms. Disability discrimination is a social injustice and the Organisation is committed to combating such forms of discrimination. The Organisation is committed to taking an active stance in promoting disability equality in terms of our recruitment, employment,

promotion, training, equal opportunities and dignity at work and health and safety policies. Further we will aim to ensure that we do not discriminate in the terms and conditions of employment we offer all staff and prospective staff.

The Organisation is committed to signing up to and/or maintaining the Employment's Service disability symbol, to show that we are taking positive steps to employ and retain disabled people. To do this we will ensure the following action:

- to interview all applicants with a disability who meet the minimum criteria for a job vacancy and consider them on their abilities and on merit;
- to ensure there is a mechanism in place to discuss at any time, but at least once a year, what can be done to make sure staff with disabilities can develop and use their abilities at work;
- to make every effort when employees become disabled to make sure that they remain in employment;
- to ensure that we make reasonable adjustments to posts, the working environment and work equipment to enable disabled applicants and employees to fulfil their potential and carry out their jobs successfully;
- to take action to ensure that all employees develop the appropriate level of disability awareness needed to make our commitments work;
- each year to review these commitments and what has been achieved, plan ways to improve on them and let employees and the Employment Service know about progress and future plans.

The Organisation understands that we are bound by the provisions and spirit of the Disability Discrimination Act 1995, the Disability Discrimination (Amendment) Regulations 2003 and the Disability Discrimination Act 2005. We therefore intend to make maximum use of the opportunities created by this and other legislation to discharge our moral and legal duties. The Organisation will pursue employment procedures and practices designed to promote disability equality, equal employment opportunities for disabled people and eliminate disability discrimination. The following areas will be reviewed and procedures and guidelines developed to ensure that they comply with the principles of the Organisation's policy and any relevant statutory requirement.

- (a) Recruitment and selection, including sources of recruitment, the relevance of all job descriptions and person specifications; the wording and images portrayed in adverts, content of application forms, selection criteria, shortlisting, interviewing, promotion and transfer.
- (b) Training and development, including training facilities, training information, publicity, training needs identification, selection criteria and training provision.
- (c) The effectiveness and appropriateness of the Organisation's grievance and disciplinary procedures.
- (d) Terms and conditions of employment, including arrangement of working hours, patterns of work, pay grades/structures, sickness absence policies, redeployment and transfer arrangements, and arrangements to meet the special needs of disabled people.

- (e) Workplace facilities, including ensuring accessibility in all areas of the Organisation.
- (f) Termination of employment, including retirement and voluntary redundancy.

### The Responsibilities of the Organisation as an Employer

It is recognised that responsibility for providing equal opportunities in employment rests primarily with the Organisation as an employer. The overall responsibility for ensuring the full implementation and monitoring of the Organisation's Equal Opportunities Policy will rest with the Chief Executive, assisted by the Head of Human Resources.

The Chief Executive will have specific responsibility for the implementation and monitoring of the policy and for reviewing and developing the Organisation's employment procedures and practices.

The Organisation makes the following commitments to ensure the effectiveness of the policy. These are to:

- (a) consult on the content, implementation and monitoring of the Organisation's policy with the trade union(s);
- (b) ensure that the Organisation's policy is made known to all employees and job applicants;
- (c) provide training and guidance for managers and employees, to ensure that they understand and can discharge their responsibilities in law under the Organisation's policy;
- (d) examine and regularly review employment procedures and practices with a view to promoting equality of opportunity and eliminating discrimination, harassment and bullying;
- (e) monitor, on an annual basis, policy effectiveness and identify areas for action; and
- (f) ensure that employee actions, in the provision of services, are carried out in a non-discriminatory manner reflecting the spirit, meaning and intent of this policy.

### The Responsibilities of Managers

Employees of the Organisation who have any kind of management responsibility – either as senior managers or line managers/supervisors - have an important role to play in ensuring the wording of this policy is put into action at all levels of the Organisation. The above groups have a four-fold role in terms of policy implementation. These are to:

- (a) Ensure that any decisions they make on behalf of the Organisation, which affect those with whom they work, or may work in the future, are fair and based on merit. Further, they must ensure their personal language and behaviour is appropriate;
- (b) be able and prepared to give a lead among staff in terms of challenging unacceptable language and behaviour;
- (c) Be prepared and able to deal with any complaints raised with them under this policy. It is essential that line managers feel that they have the support of senior

management in terms of their roles within managing all elements of the Policy and this will be offered to them at all times; and

- (d) Understand the need to take seriously all complaints made to them. Problems are best dealt with as quickly and locally as possible. In such a workplace culture, individual staff members are much more willing and able to come forward with a complaint before it develops into something more serious and difficult to handle.

In order to assist managers in their role the Organisation will provide written practical guidance, backed up by training. One key aim of such guidance and training will be to ensure that equality issues are dealt with in a fair and consistent manner throughout the Organisation.

### The Responsibilities of Employees

It is recognised that individual employees acting on behalf of the Organisation at all levels have responsibilities in law and in terms of the Organisation's policy for assisting in the prevention of discrimination, harassment and bullying. In particular, individual employees:

- (a) are required to co-operate with measures introduced by the Organisation to promote equal employment opportunities and eliminate discrimination, harassment and bullying;
- (b) must not themselves discriminate against other employees of the Organisation or job applicants;
- (c) must not induce, or attempt to induce, other employees, management or trade unions to practice discrimination;
- (d) are required to draw to the attention of management any suspected discriminatory actions or practices;
- (e) must not victimise any individual who makes a complaint of discrimination, harassment or bullying at work, or who has provided information about the alleged discrimination, harassment or bullying of others;
- (f) must not harass, bully, abuse, victimise or intimidate other employees on any grounds, or otherwise act in a discriminatory manner; and
- (g) Must ensure that no actions are undertaken in their dealing with members of the public which could be held to be discriminatory in terms of this policy.

Discriminatory acts or omissions, which are contrary to the Organisation's policy and are perpetrated by employees of the Organisation, constitute a disciplinary offence and will be viewed seriously. Appropriate disciplinary action will be taken, in accordance with the Organisation's Disciplinary Procedure. This may include dismissal.

### Training

It is the responsibility of the Organisation to ensure that adequate training is provided to promote equal opportunities and all employees will be required to attend such training.

Managers and employees shall be made aware of the Organisation's equal opportunities policy. Senior managers and line managers/supervisors will further be given training that is tailored to their needs and which prepares them adequately for the role they must play if this policy is to be successfully implemented.

Personnel involved in advertising and recruiting to posts within the Organisation will be provided with training to ensure they understand the need to appoint new staff on merit, and not on the basis of discriminatory practices.

Training on this policy will be provided to all new staff as soon as possible following their appointment to the Organisation. Refresher training will be provided where it is agreed to be necessary.

Training will be provided to those personnel charged with investigating complaints under this policy to ensure fairness and consistency of approach in any proceedings raised under the Organisation's Disciplinary Procedure.

#### Employment Procedures and Practices

The Organisation will pursue employment procedures and practices designed to promote equal employment opportunities and eliminate discrimination and will regularly review their effectiveness. In particular, the following areas will be reviewed and procedures and guidelines developed to ensure that they comply with the principles of the Organisation's policy and any relevant statutory requirement.

- (a) Recruitment and selection, including sources of recruitment, the wording and images portrayed in adverts, content of applications forms, selection criteria, shortlisting, interviewing, promotion and transfer.
- (b) Training and development, including training facilities, training information, publicity, training needs identification, selection criteria and use of the appraisal system..
- (c) Grievance and disciplinary procedures, including discrimination, harassment, bullying and victimisation in order to ensure that all procedures are used and implemented in a fair, consistent and non-discriminatory manner.
- (d) Terms and conditions of employment, including arrangement of hours of work, patterns of work, pay grades and structures, sickness absence policies, redeployment and transfer arrangements, the rights of women staff who are pregnant, the rights of those with parental or caring responsibilities, and arrangements to meet the special needs of disabled people.
- (g) Workplace facilities.
- (e) Termination of employment, including retirement and voluntary redundancy.

## Monitoring

In consultation with the trade union(s), the Organisation will develop and maintain procedures and systems for monitoring the progress of the equal opportunities policy in practice. This will involve the collection of relevant information and statistics on the composition of the workforce and job applicants, including the undertaking of an equal opportunities audit of the workforce. It is intended that the composition of the workforce and job applicants will be monitored primarily by means of information obtained from employees and job applicants through voluntary self-classification in the following areas: gender; marital status; disability; age and ethnic group. Such information collected will be used solely for monitoring purposes. Arrangements will be made to protect the confidentiality of such information during its collection, retention and use.

The information obtained through the monitoring process will assist the Organisation in the identification of the workforce profile and will provide a database for the initiation of positive action programmes which can work towards achieving equality objectives and targets.

The monitoring process will also encompass an audit of the use of the grievance procedure and the harassment and bullying procedure to help identify the numbers of complaints raised in any given period. It will also cover the extent and effectiveness of manager and staff training on equal opportunities issues. Monitoring will take place annually.

## Consultation with the Trade Union(s)

A joint body consisting of representatives of the Organisation and recognised trade unions will be established for the purpose of consultation on equal opportunities issues and aspects of the policy, including the analysis of statistical returns produced by the monitoring process. This joint body will meet quarterly, and more frequently by agreement.

## General

It should be noted that the Organisation's equal opportunities policy extends to groups who are not specifically covered by anti-discrimination legislation at present. The policy intends that the elimination of discrimination in the employment field be related to discriminatory actions or omissions which are unlawful, unfair or inappropriate in a workplace setting. Guidance on unlawful discrimination is set out in Appendix 1 and guidance on unfair and inappropriate discrimination is set out in Appendix 2.

The Organisation's policy does not detract from an individual's rights at work. This policy does not prevent any individual from pursuing their contractual rights through internal or external appeals procedures or from

pursuing their statutory rights through any body that deals with the enforcement of employment legislation.