

Equality and Diversity Policy & Procedure

Policy Date 2018/21

Policy Version (V1.2)

Month & Year of Ratification

This document remains valid whilst under review

TARGET AUDIENCE (including temporary staff)	
People who need to know this document in detail	Line managers and service managers
People who need to have a broad understanding of this document	All staff (including bank, agency and contractors)
People who need to know that this document exists	

Policy Author: Diversity and Inclusion Lead

Approved by: Terms & Conditions

Date: 3 May 2018

Ratified by: JCNC

Date: 17th May
2018

Date of next review: June 2021

CONTENTS

1. Contents

EQUALITY AND DIVERSITY	1
POLICY & PROCEDURE	1
1.1 Purpose	5
1.2 Scope	6
1.3 Definitions	6
2. PROCEDURES	8
2.1 Handling discrimination and prohibited conduct	8
2.2 Handling discrimination and hate incidents or criminal allegations	10
2.3 Handling discrimination and prohibited conduct at work	10
2.4 Recruitment and Selection	10
2.5 Duty to make reasonable adjustments	11
2.6 Reasonable adjustments for disabled people in services and public functions	11
2.7 Anticipating reasonable adjustments	12
2.8 Reasonable adjustments for disabled people seeking work and workers	13
2.8.1 Disabled people seeking work at the Trust	13
2.8.2 Employees and Workers	13
2.8.3 Access to Work programme	14
2.9 Occupational requirements	15
2.10 Positive action	16
2.10.1 Positive action: general requirements	16
2.10.2 Positive action: recruitment and promotion requirements	17
2.10.3 What is Proportionate	17
2.11 Harassment	17
2.12 Supporting gender transition in the workplace	18
2.13 Religion and religious observance	18
2.14 Handling human rights claims	18
2.15 Enforcement and Redress	19
3. RESPONSIBILITIES	19
4. ASSOCIATED DOCUMENTS AND REFERENCES	21
5. MONITORING COMPLIANCE	22
6. DISSEMINATION AND IMPLEMENTATION	22
7. CONSULTATION, APPROVAL, RATIFICATION & REVIEW	22
8. VERSION CONTROL	22
9. APPENDIX A: PROHIBITED CONDUCT DEFINITIONS	24
9.1 Direct discrimination	24
Discrimination by association	24
Discrimination by perception	24

Discrimination arising from disability	24
Gender reassignment discrimination: cases of absence from work	24
Pregnancy and maternity discrimination: non-work cases	25
Pregnancy and maternity discrimination: work cases	25
Indirect discrimination	25
9.2 Failure to make reasonable adjustments for disabled people	25
9.3 Harassment	26
9.4 Sexual Harassment	26
9.5 Rejection or submission	26
9.6 Victimisation	26
9.7 Enquiries about disability and health	26
9.8 Breach of an equality clause	27
9.9 Breach of maternity equality clause	27
9.10 Relationships that have ended (prohibited conduct)	28
9.11 Unlawful acts of employees and agents	28
9.12 Instructing, causing or inducing discrimination	28
9.13 Aiding contraventions	28
10. APPENDIX B: REASONABLE ADJUSTMENT NOTES	29
11. APPENDIX C: HUMAN RIGHTS	31

1 INTRODUCTION

1.1 Purpose

This policy aims for equality of opportunity that is accessible, person-centred, safe and effective to be promoted for people who use our services as part of Sussex Community NHS Trust's vision of 'excellent care at the heart of the community' and for staff .to know that the Trust is committed to ensuring equality of opportunity, support and development, throughout their careers.

The policy also aims to translate how the Trust's four core values promote equality:

- 'Compassionate care'** accessible to all patients, visitors and staff and which is free of unlawful discrimination
- 'Working together'** in culturally respectful ways to foster good relations and embracing our differences
- 'Achieving ambitions'** to promote peoples independence and in fairness to their rights enabling each individual to maximise their potential
- 'Delivering excellence'** by promoting equality of opportunity in the diagnosis, treatment and improvement of health and wellbeing

The policy sets out how the first principle of the NHS within its constitution is put into effect

The NHS provides a comprehensive service, available to all

It is available to all irrespective of gender, race, disability, age, sexual orientation, religion, belief, gender reassignment, pregnancy and maternity or marital or civil partnership status. The service is designed to improve, prevent, diagnose and treat both physical and mental health problems with equal regard. It has a duty to each and every individual that it serves and must respect their human rights. At the same time, it has a wider social duty to promote equality through the services it provides and to pay particular attention to groups or sections of society where improvements in health and life expectancy are not keeping pace with the rest of the population.

[DoH NHS Constitution October 2015](#)

The policy sets out procedures to support staff meet the duties to avoid prohibited conduct and discrimination placed upon the Trust by the Equality Act 2010. It also supports staff meet the Trust's duties to make reasonable adjustments and the proactive public sector equality duty (PSED). Additionally there are optional positive action provisions to address evidence of disadvantage, differential needs and disproportionately low participation amongst certain protected groups in society.

The policy also supports the requirements of the Trust's registration with the Care Quality Commission in 'respecting and involving service users' to 'take care to ensure that care and treatment is provided to service users with due regard to their age, sex, religious persuasion, sexual orientation, racial origin, cultural and linguistic background and any disability they may have' (2010).

The policy supports staff to act compatibly with the rights contained in the Human Rights Act (1998) in everything that it does. The Trust takes a values based approach (see Appendix C) to putting human rights into practice based on fairness, respect, equality, dignity and autonomy (FREDA) (Department of Health 2008)

1.2 Scope

This policy is to be applied by all staff within all services or discharging any public function (e.g. safeguarding vulnerable people). This includes all clinical and corporate services. It also has specific effect in the work context. It applies throughout all locations; although where physical adaptations as part of reasonable adjustments there should be full engagement with Estates and Facilities as non-Trust owned properties require consent of the landlord..

1.3 Definitions

Protected Characteristics

There are 9 characteristics protected by the Equality Act 2010:

- Age
- Disability
- Gender reassignment
- Marriage and Civil Partnership
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation

Other characteristics are not protected and promoted by the Equality Act 2010 but are still relevant to promoting equality in a broader sense. Staff must ensure that the enjoyment of the rights and freedoms in the European Convention on Human Rights (ECHR) are secured without discrimination on any ground such as: political or other opinion, birth or other status, trade union membership etc. (see Appendix C).

Characteristics, such as: income, homelessness and sex workers are associated with health disparities and are especially relevant for targeted health improvement initiatives that staff should remain aware of within their conduct. Military and veteran status is promoted by the nation's Military Covenant and places obligations upon the Trust to ensure timely access to healthcare.

Age

Age refers to a person belonging to a particular age group. An age group includes people of the same age (e.g. 18) and people of a particular range of ages (e.g. Over 75). Where people fall in the same age group they share the protected characteristic of age.

Disability

A person is disabled if they have a physical or mental impairment, which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The Trust supports the social model¹ of disability whereby people are disabled by social factors, rather than locating the cause of the disability within the individual person.

Gender reassignment

Where a person has proposed, started or completed a process to change his or her sex. A transsexual person has the protected characteristic of gender reassignment. The person does not require being under medical supervision to have the characteristic of gender reassignment.

The Trust recognises that the term 'transsexual' is a medico-legal term that is used in this policy to specifically reflect the wording of the law. It also acknowledges that many people do not identify with that term but who otherwise may be protected under the gender reassignment provisions of the Equality Act 2010.

The Trust commits to using inclusive terminology within communications, for example using the term 'Trans*'.

Marriage and Civil Partnership

Couples can have their relationships legally recognised as 'marriages'. Same-sex couples can also have their relationships legally recognised as 'civil partnerships' under the Civil Partnership Act 2004. Civil partners must be treated the same as married couples on a wide range of legal matters.

Pregnancy and Maternity

Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavourably because she is breastfeeding.

Race

Race refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins. People who have or share characteristics of colour, nationality or ethnic or national origins can be described as belonging to a particular racial

¹ [Social Model of Disability](#)

group. A racial group can be made up of two or more different racial groups, e.g. Black Britons.

Religion or belief

The protected characteristic of religion or religious or philosophical belief includes a lack of religion or belief (e.g. Atheism). It is a broad definition in line with the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights. The main limitation for the purposes of Article 9 is that the religion must have a clear structure and belief system.

Sex

Sex refers to either a man or a woman.

Sexual orientation

Sexual orientation refers to a person's sexual attraction towards people of his or her own sex (i.e. gay or lesbian), people of the opposite sex (i.e. heterosexual) or to people of both sexes (i.e. bisexual).

Prohibited conduct

Prohibited conduct relevant to the Trust includes:

- Direct discrimination
 - Discrimination by association
 - Discrimination by perception
- Discrimination arising from disability
- Gender reassignment discrimination : including cases of absence from work
- Pregnancy and maternity discrimination: non-work cases
- Pregnancy and maternity discrimination: work cases
- Indirect discrimination
- Failure to make reasonable adjustments for disabled people
- Harassment
- Victimisation
- Inappropriate or unjustified enquiries about disability and health
- Breach of an equality clause
- Breach of maternity equality clause
- Relationships that have ended (prohibited conduct)
- Unlawful acts of employees and agents
- Instructing, causing or inducing discrimination
- Aiding contraventions.

For further information please refer to 'Appendix A: Prohibited conduct definitions' below.

2. PROCEDURES

2.1 Handling discrimination and prohibited conduct

Staff must not discriminate or victimise any person who uses Trust services or who has any contact with the Trust including patients, carers, family members, volunteers and

members of the public, colleagues and other sector professionals, because of a protected characteristic, by either:

- Not providing a service to a person who requires it (e.g. refusal to treat)
- The terms on which services are provided (e.g. applying clinically unnecessary contra-indicators)
- By terminating a service (e.g. withdrawal of treatment), or
- By subjecting a person using a service to any other detriment (e.g. not reformatting patient correspondence in a format accessible to a patient with learning disabilities).

The ban on harassment protects all people who might or do use Trust services and in the exercise of public functions. The very limited exceptions to these bans are detailed in the Equality Act 2010.

The bans on discrimination and harassment apply to all relationships (e.g. clinician – patient). that have ended, i.e. towards people who previously used services

Where people whose our services or their representatives raise concerns about experiences of discrimination and prohibited conduct, staff should seek to resolve these in the first instance where possible. Immediate consideration should be given to upholding safety, privacy and dignity. If the concern cannot be resolved, and with the agreement of the individual the member of staff may ask a manager to resolve the concern or refer the individual to the Patient Advice and Liaison Service (PALS). An individual may choose to approach PALS or Complaints directly.

Staff must report all incidents of potential discrimination and prohibited conduct on the Trust's incident reporting system. If the matter is passed onto PALS, staff members in that service will ensure the individual's concern is recorded as potential discrimination and (if appropriate) link the concern to the original incident report.

An individual may lodge a claim for discrimination with the Trust without going through the PALS and complaints service. In this instance the matter will be handled by the Company / Trust Secretary, supported by the Inclusion Team where it will be recorded and reported annually.

If necessary an appropriate advocate or interpreter should be arranged by staff to support the individual. Carers should be involved, and parents or guardians may represent the views of children and young people. If a young person indicates that they do not want the parent or guardian involved then this should be respected unless a registered professional makes a documented decision that it is not in the child or young person's best interests.

Staff who observe prohibited conduct by employees or contractors should challenge the conduct. The person's manager should be informed as soon as possible. If the matter constitutes potential criminal behaviour then Trust security should be notified immediately, or the police should be involved as per Trust's Security Policy. If the conduct constitutes a safeguarding concern for a vulnerable person, this should be reported as per the Trust's safeguarding policies.

2.2 Handling discrimination and hate incidents or criminal allegations

An individual may also decide to report an incident of discrimination as a hate incident, sexual assault or other criminal allegation. This may be reported through Trust security or they might approach the police directly. Priority should normally be given to the legal investigation of the hate incident or alleged crime to conclude before the discrimination is investigated internally.

Staff members who witness or are victims of hate incidents involving people using services at work (e.g. within waiting areas) should refer to the procedures set out in the Trust's violence and aggression policy. Managers will ensure that all public waiting areas include notices about acceptable behaviour and that appropriate staff have received relevant training.

2.3 Handling discrimination and prohibited conduct at work

The Trust fully recognises the importance of representative workplaces in which all processes are transparent, opportunities are based on merit, rewards are fair and equitable and in which staff members are engaged and free of discrimination.

The bans on discrimination and victimisation apply at work and protect people seeking to work in the Trust through the arrangements made for deciding to whom to offer employment, the terms on which employment is offered, or by not offering employment.

They also apply at work to protect employees in: employment terms, the way the Trust affords access (or not) to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service, by dismissal, or by subjecting employees to any other detriment. Similar prohibitions apply in all contract work with the Trust as a principal. Bans on harassment apply to all employees, workers, applicants and contractors at work.

The bans on discrimination and harassment apply to all relationships that have ended, i.e. towards ex-employees, workers and contractors.

There are very limited and narrow exceptions to prohibited conduct at work that are set out in the Equality Act 2010. A general exception is that the Trust is permitted to pay or provide fewer other benefits, services or facilities to a worker with less service than another worker. This is an exception to age discrimination where the benefit is awarded in relation to service of five years or less. If the length of service exceeds five years, the exception applies only if it reasonably appears to the Trust that the way in which length of service is used to award benefits will fulfil a business need. For example, staff award ceremonies present gifts to workers with long service because the Trust reasonably believes this encourages loyalty, motivation and rewards experience.

2.4 Recruitment and Selection

Recruitment and selection will be undertaken in accordance with the Trust's Recruitment and Selection Policy and guidelines. Reasonable adjustments will be considered for disabled people seeking work at the Trust.

If people who seek work at the Trust feel they have been discriminated within any part of the recruitment and selection process (advertising, job descriptions, person specifications, application forms, interviews, tests, short-listing or appointments) may report this via the Equality and Human Rights policy to the Trust Inclusion Team.

Recruiting managers will ensure that no job descriptions and person specifications include requirements that are discriminatory.

Staff will ensure wording avoids biased language and that age bars / limits are only applied where they are objectively justified or lawful. Recruiting managers seeking to include age limits for adult post-holders must only do so in conjunction with the Human Resources department.

Managers who undertake the recruitment and selection process will have received additional training in order to fulfil the Trusts standards.

The Trust operates a guaranteed interview scheme for disabled applicants who meet the minimum criteria through the 'disability confident' scheme (which has replaced the Two Ticks scheme) operated through the Department for Work and Pensions.

All job adverts will feature the Equality and Human Rights Policy and the 'Disability Confident logo.

2.5 Duty to make reasonable adjustments

The duty comprises the following three requirements (for further detailed notes please refer to Appendix B):

- (1) Where a 'provision, criterion or practice' puts a disabled person at a substantial disadvantage compared to people who are not disabled, the Trust is required to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (2) Where a 'physical feature' puts a disabled person at a substantial disadvantage compared to people who are not disabled, the Trust are required to take such steps as it is reasonable to have to take to avoid the disadvantage
- (3) Where a disabled person would, but for the provision of an 'auxiliary aid', be put at a substantial disadvantage compared to people who are not disabled, the Trust are required to take such steps as it reasonable to have to take to provide the auxiliary aid.

2.6 Reasonable adjustments for disabled people in services and public functions

If a disabled person identifies something that would cause a substantial disadvantage to them, staff should take all reasonable steps with the disabled person to identify a reasonable adjustment or to provide an aid to overcome it. A disabled person must always be consulted about reasonable adjustments before any decision is taken. Staff should always consider the steps suggested by an individual disabled person, even if it later agreed with the individual that it is more reasonable to consider other adjustments.

If a disabled person using a Trust service identifies they already have a reasonable adjustment (e.g. an electric mobility scooter), staff should ensure they do not put that person at a further disadvantage in the way they are treated or arrangements for handling or storing reasonable adjustments (e.g. areas for parking the scooter). Staff should not remove a person's reasonable adjustment (e.g. specialist pill dispenser) without the individual's permission.

Staff should encourage independence, although if it is apparent that a disabled person is being put at a substantial disadvantage and may require reasonable adjustments, assistance should be sensitively offered. If appropriate this assessment may form part of a person's care assessment.

All reasonable adjustments for disabled patients and regular users of services should be documented in a confidential manner with the permission of the individual in their patient documentation / care records. Where an individual does not want their reasonable adjustments formally recorded it should be explained to the individual that this might impact their care in the future.

Reasonable adjustments include providing accessible information, for example ensuring that a patient information leaflet is made available in large print for someone with partial sight.

Staff should forward plan reasonable adjustments to meet any continuing healthcare needs, including the self-management of long-term conditions or health improvement. This will often require strong teamwork and multi disciplinary working.

Failure to make reasonable adjustments constitutes potential disability discrimination, and should be handled and reported as per the procedures set out in 'handling discrimination and prohibited conduct in services and public functions' section above.

2.7 Anticipating reasonable adjustments

Staff must anticipate reasonable adjustments for disabled patients and people using services as a whole. This does not mean anticipating the needs of every disabled person but staff should consider types of disability, e.g. blind patients, patients with learning disabilities etc.

Staff must report any risks they identify of substantial disadvantage that disabled people may face, via the Trust's risk management system. As a control measure, managers should liaise with Estates and Facilities to ensure that each site or location has an up-to-date access audit and (if necessary) an improvement plan, including ensuring there are arrangements in place for resourcing. Each service management team will develop an equality analysis of the impacts of their services on disabled people and keep it up-to-date.

Staff will ensure that they are aware of how to source or use any relevant reasonable adjustments within their services, e.g. how to book a British Sign Language (BSL) interpreter. Managers and supervisors will support staff to know how to operate and maintain reasonable adjustments, such as induction loop systems: a type of

communication aid for some deaf and hard-of-hearing people who use hearing aids or loop listeners to hear sounds more clearly by reducing background noise.

Full details on how to ensure accessible information is available for staff and patients can be found on the PULSE and by referring to the Accessible Information Policy.

2.8 Reasonable adjustments for disabled people seeking work and workers

As an employer the Trust has a duty to make reasonable adjustments for all disabled employees or contractors (agents) of the Trust and to any disabled applicants for employment or a disabled person who is considering applying. The Trust may also have a duty after employment or a service contract has ended.

Managers should follow the guidance set out in the Trust's Recruitment and Selection Policy and the Equality Act 2010 Employment Statutory Code of Practice (Equality and Human Rights Commission 2011) further information about reasonable adjustments may be found in the Sickness Absence Toolkit and the Redeployment Policy.

2.8.1 Disabled people seeking work at the Trust

Staff will make reasonable adjustments for disabled people who seek work at the Trust within any part of the recruitment and selection process (advertising, job descriptions, person specifications, application forms, interviews, tests, short-listing or appointments etc.) The Trust only has a duty to make an adjustment if it knows, or could reasonably be expected to know, that a disabled person is, or may be, an applicant for work.

There are restrictions on when health or disability-related enquiries can be made prior to making a job offer or including someone in a pool of people to be offered a job. However, questions are permitted to determine whether reasonable adjustments need to be made in relation to an assessment (e.g. a BSL interpreter is required) such as an interview or other process designed to give an indication of a person's suitability for the work concerned (see 'Enquiries about disability and health below')

Recruitment managers and selection panels will not use reasonable adjustments as a reason to not appoint an individual.

2.8.2 Employees and Workers

Managers must make reasonable adjustments for disabled employees and workers in all parts of their job. For disabled staff or workers already in work, the Trust has a duty to make an adjustment if they know, or could reasonably be expected to know, that an employee or worker has a disability and is, or is likely to be, placed at a substantial disadvantage. All decisions about reasonable adjustments should be mutually agreed between the Trust and the person with the disability. Staff and workers should always consider the steps suggested by an individual disabled person, even if it later agreed with the individual that it is more reasonable to consider other adjustments.

Managers will do all they can reasonably be expected to do to find out whether an individual requires reasonable adjustments (e.g. private routine discussions about health, disability and reasonable adjustments during staff appraisal with managers).

The Trust respects the right to privacy for a disabled person to keep a disability confidential, however if an employee keeps a disability confidential then the Trust will not be under a duty to make a reasonable adjustment, unless it could reasonably be expected to have known of its existence.

If a Trust employee (such as an occupational health nurse or a HR advisor) or Trust agent (e.g. a recruitment agent) knows professionally of a worker, applicant or potential applicant's disability, the Trust will not usually be able to claim that they did not know of the disability and that they would have had no duty to make a reasonable adjustment. The Trust acknowledges that information about disabled people may come through different channels; there are suitably confidential processes within recruitment; subject to the disabled person's consent to bring that information together to make it easier for the Trust to fulfil its duty.

If a manager or worker is unsure about what may be considered a reasonable adjustment this should be handled through case-specific risk-assessments in partnership with the Occupational Health department, Human Resources Department / Inclusion Team and where appropriate Estates and Facilities.

When making enquiries about a disability, staff must consider issues of dignity and privacy and ensure that personal information is dealt with confidentially. Members of staff cannot necessarily expect to be told about why certain reasonable adjustments are being made without the consent of the disabled person concerned.

Managers will not use reasonable adjustments as a reason to penalise or dismiss an individual.

2.8.3 Access to Work programme²

Access to Work is a specialist disability service delivered by Jobcentre Plus, which gives practical advice and support to disabled people, whether they are working, self-employed or looking for employment. Access to Work is provided where someone needs support or adaptations beyond the reasonable adjustments that an employer is legally obliged to provide under the Equality Act. (Department for Work and Pensions 2014)

The Trust are unable to approach the service on the member of staff (or potential member of staff's behalf as the service is designed specifically to assist the individual). A person with a disability should access support directly at the earliest possible opportunity (<https://www.gov.uk/access-to-work>) and should discuss the matter with their manager or supervisor. New starters should, wherever possible, apply to Access to Work within six weeks of starting work at the Trust to minimise costs for the Trust.

² [Access to Work](https://www.gov.uk/access-to-work)

Following an assessment by the Access to Work Adviser, the disabled person's manager will be responsible for assessing the recommendations and identifying funding where appropriate and then arranging for the support to be put in place from the options identified and to then claim the partial grant back from Access to Work.

Access to Work can support disabled people in a number of ways. For example it can provide funds towards:

- Special aids and equipment
- Adaptations to equipment
- Travel to work
- Travel in work
- Communication support at interviews
- A wide variety of support workers, and
- The Mental Health Support Service.

2.9 Occupational requirements

Occupational requirements are a general exception to unlawful direct discrimination in relation to work. They apply where because of the nature or context of the work a post specifies a person must be of a particular sex, race, disability, religion or belief, sexual orientation or age – or not to be a transsexual person, married or a civil partner.

The requirement must not be a sham or pretext, or it could give rise to a claim of unlawful direct discrimination. There must be a link between the requirement and the job, for example a service manager decides that a new therapist post-holder must be female and this is required because her role will be working with female victims of sexual abuse.

Managers who require a post-holder to have a particular occupational requirement must first contact the Human Resources Department for advice and agreement. The recruitment case must follow the guidance set out in the EHRC Employment Statutory Code of Practice (Equality and Human Rights Commission 2011). The following conditions must be met in relation to the nature or context of the work, and evidence documented, prior to applying an occupational requirement:

- The requirement is an occupational requirement;
- The application of the requirement is a proportionate means of achieving a legitimate aim; and
- The applicant or worker does not meet the requirement; or,
- Except in the case of sex, the employer has reasonable grounds for not being satisfied that the applicant or worker meets the requirement.

In relation to whether the occupational requirement is a proportionate means of achieving a legitimate aim, the following considerations as a minimum must always be addressed:

- Do any or all of the duties of the job need to be performed by a person with a particular characteristic?
- Could the employer use the skills of an existing worker with the required protected characteristic to do specific aspects of the job?

If all of these conditions are true and then an occupational requirement may be applied in relation to the following circumstances

- The arrangements made for deciding whom to offer employment
- An offer of employment
- The provision of access to opportunities for promotion, transfer, training, or
- Except in relation to sex, dismissals, expulsions and terminations.

The occupational requirement must be clearly identified at the beginning of the recruitment, training or promotion process and be clearly included in all advertising. Recruitment managers must re-assess the job whenever it becomes vacant to ensure that the statutory conditions for applying the occupational requirement exception still apply.

2.10 Positive action

Managers may optionally take positive action measures to improve equality for people who share a protected characteristic where it meets certain conditions and the actions meet a certain test. These measures may be taken either within service delivery or a work relationship. Managers seeking to take advantage of these must present a business case for approval to the Trust's Equality and Diversity Steering Group (EDIG) that follows the guidance set out in the Equality Act 2010 Statutory Code of Practice Services, Public Functions and Associations³ (Equality and Human Rights Commission 2011).

2.10.1 Positive action: general requirements

It is not prohibited for the Trust to use positive action measures when it is reasonably held that:

- (a) People with a protected characteristic suffer a disadvantage connected to that characteristic, or
- (b) People with a protected characteristic have needs that are different from the needs of people without it, or
- (c) Participation in an activity by people who share a protected characteristic is disproportionately low

The action must be a proportionate means of achieving the aim of either:

- (a) Enabling or encouraging people with the protected characteristic to overcome or minimise that disadvantage,
- (b) Meeting those needs, or
- (c) Enabling or encouraging persons with the protected characteristic to participate in that activity

Examples may include clinics limited to people over 60 years old, or an outreach therapy service for members of South Asian communities, or a male health improvement campaign.

³ [Practice Services, Public Functions and Associations](#)

Another example might be where an analysis of workforce representation revealed under-representation of BAME people accessing leadership opportunities, so in response the Trust holds leadership development workshops targeted at BAME employees.

Positive action is time-limited since the conditions necessary it to remain lawful may change over time, e.g. as health and the workforce changes over time.

2.10.2 Positive action: recruitment and promotion requirements

Recruiting managers may take a protected characteristic into consideration when deciding whom to recruit or promote, where either:

- (a) People with a protected characteristic suffer a disadvantage connected to that characteristic, or
- (b) Participation in an activity by people with a protected characteristic is disproportionately low

This action can only be taken where the candidates are equally as qualified as each other. The judgement of whether one person is as qualified as another is not just about qualifications, but rather an objective judgement based on the criteria the recruiting manager is using to establish the best candidate for the job. Each case must be considered on its own merits.

Any action taken must be a proportionate means (see 'What is proportionate?' below) to:

- (a) Overcome or minimise that disadvantage, or
- (b) Participate in that activity.

2.10.3 What is Proportionate

The potentially discriminatory effect of any practice should be significantly outweighed by the importance and benefits of its legitimate aim, and the employer should have no reasonable alternative.

2.11 Harassment

The Trust has an established Bullying, Harassment and Conflict in Working Relationships Policy for employees⁴, which outlines the procedure for handling such cases. This policy reinforces that bullying and harassment at work is unacceptable and that the Trust are committed to providing a working environment that is free from harassment, intimidation and all forms of behaviour, which are unacceptable and offensive.

All managers have a responsibility to be familiar with the procedures outlined in the Bullying, Harassment and Conflict in Working Relationships Policy and should draw the policy to the attention of all existing employees and new employees.

⁴ [Bullying and Harassment Policy](#)

All employees have a responsibility for their own behaviour in accordance with the Bullying, Harassment and Conflict in Working Relationships Policy.

2.12 Supporting gender transition (confirmation) in the workplace

The Trust is committed to supporting all its employees with regard to personal circumstances that may impact on work. Full advice and guidance is available for the trans member of staff and for managers within the Supporting Trans People Guidance available on the Pulse.⁵

The decision to transition is one that the employee has very carefully considered and includes much needed medical treatment that is essential for the employees' health and wellbeing. It is never undertaken lightly by the employee and any medical decision about treatment is only taken after careful and thorough prior assessment. Above all, it is not a choice. By the time of transitioning, the employees profound and persistent gender discomfort has become intolerable and living in a gender role that accords with their internal sense of their own gender identity has become an urgent necessity.

Support may also include time away from work (see Special Leave Policy) for outside support networks, any counselling or medical issues; dealing with the reactions of other employees; educating employees about the issues involved and confidentiality.

Trans people have the right to call a halt to the transition process and choose to remain in a more gender ambiguous identity at any time if they wish.

2.13 Religion and religious observance

Staff members requiring modifications to their working practice or environment in conformance with their religious or philosophical beliefs may request these via their line manager or a member of HR. This could include (but is not limited to): requests for time off; dietary needs; prayer needs; and, clothing. Time off requests will normally be considered from the normal annual leave entitlements

Upon receiving a request, reasonable options and alternatives will be explored in consultation with the individual staff member and other team members where appropriate. Where reasonable the Trust will try wherever possible to accommodate staff needs and avoid adverse impact.

All patients and people using services will be supported to meet their religious needs.

2.14 Handling human rights claims

Claims of human rights breaches should be handled by staff in a similar way to handling discrimination and prohibited conduct. Where these incidents / concerns / complaints /

⁵ [Supporting Trans People](#)

claims are being recorded as discrimination they should be recorded under normal reporting procedures and highlighted to the Inclusion Team within HR as a potential breach of human rights via email, and will be reported in the annual report.

2.15 Enforcement and Redress

Any member of staff who unlawfully discriminates or causes prohibited conduct, or fails to adhere to this policy will be subject to the Trust's Disciplinary Policy⁶.

Workers may pursue complaints through either the Trust Grievance Policy⁷ or the Bullying, Harassment and Conflict in Working Relationships Policy⁸ whichever is relevant.

Where a member of staff believes that discrimination has become cultural or so ingrained within operating systems or procedures they may wish to raise this under Freedom to Speak Up⁹ – details available on the Pulse.

Employees or workers will not be discouraged or penalised if they wish to contact their Trade Union, Citizens Advice Bureau (CAB) or other public sector agencies such as the Equality and Human Rights Commission (EHRC) or National Guardians Office.

3. RESPONSIBILITIES

Chair and Trust Board will:

- Ensure that equality and human rights is integrated into all Trust business, in both service delivery and in treatment of staff
- Ensure that Board members are trained appropriately in managing equality and human rights
- Support the Human Resources Director in addressing those areas identified from equality action plans that require improvement.

The Chief Executive will:

- Ensure that the Trust applies the principles of managing equality and human rights to all its operations and demonstrate a commitment to the advancement and safeguarding of equality and human rights
- Ensure that the commitment from the Trust to managing equality and human rights is communicated to all employees of the Trust

⁶ [Disciplinary Policy](#)

⁷ [Grievance Policy](#)

⁸ [Bullying and Harassment Policy](#)

⁹ [Freedom to Speak Up Raising Concerns](#)

- Lead by example, developing and promoting an organisational culture that is supportive of the benefits of practically delivering improvements in equality and human rights.

The Equality and Diversity Steering Group will:

- Provide scrutiny and governance of the work undertaken to deliver equality, diversity and human rights, provide assurance that employment strategies, policies, procedures, pay and benefits are progressive and meet best practice, ensure that diversity is embedded in service development and delivery and differential outcomes are examined for potential improvements that could be made and to remove any discrimination
- Recommend action and monitor progress towards national or local equality and diversity objectives.

Managers will:

- Ensure that this policy is communicated to all existing staff, and to new staff on commencement of employment
- Promote a professional and positive work environment, and in doing so ensure employees' rights to pursue a career with dignity
- Raise awareness of promoting equality and human rights and the principles, acting as a role model for others, and developing personal skills in order to handle issues relating to discrimination, harassment or other behaviours prohibited by the Equality Act 2010.
- Directly working with individuals to prevent harassment and discrimination in their work area, and ensuring that any issues arising are managed in accordance with the Trust procedures
- Ensure that staff know how to report in the event that they experience bullying or harassment or become aware of bullying and harassment in the workplace
- Ensure that the development and delivery of services appropriately includes the views of people who use the services and their carers; and that equality analyses and access audits are carried out and outcomes are monitored locally and any patterns of inequality are both addressed and reported.

Recruiting managers will:

- Work with the chair of an interview panel to ensure that all members of the selection panel have completed Equality and Diversity Training and Recruitment Training before they sit on a selection panel.

All workers will:

- Familiarise themselves with this policy and ensure that their conduct is consistent with its contents and legislation.
- Maintain a professional working environment, treating colleagues, people who use services, volunteers and carers with respect and have a responsibility to ensure that their practices promote and safeguard equality of opportunity and human rights.
- Complying with and promoting Trust policies and procedures with regard to managing diversity, and appropriately using Trust policies and procedures to raise any concerns related to equality and human rights
- Inform their line manager, the Human Resources department and or Trade Union representative if they think that unlawful discrimination may be taking place.
- Ensure that person demographic screening / forms are completed on the relevant system to ensure accurate monitoring and accessibility to services for service users.
- Ensure their personal circumstances and details are kept up to date, either by self-service ESR or by contacted the Inclusion Team.¹⁰

4. ASSOCIATED DOCUMENTS AND REFERENCES

Capability policy
Disciplinary policy
Dignity at work policy
Disability in employment policy
Grievance policy
Patient dignity policy
Policy for the involvement of carers
Raising Concerns – Freedom to Speak Up
Recruitment policy
Remuneration policy
Safeguarding policy
Security policy
Special leave policy
Supporting Trans People Guidance
Training Needs Analysis
Translation and Interpreters policy
Violence and aggression policy

DEPARTMENT FOR WORK AND PENSIONS, 2014. *Employer's Guide to Access to Work*. DWPF03a.

¹⁰ There is an option for employees to choose "Do Not Wish to Disclose"

DEPARTMENT OF HEALTH, 2013. *The NHS Constitution for England*.

DEPARTMENT OF HEALTH, 2008. *Human Rights in Healthcare - a Framework for Local Action*. London: Crown.

ELIZABETH II, 2010. *Health and Social Care Act 2008 (Regulated Activities) Regulations 2010*. London: Great Britain.

ELIZABETH II, 1998. *Human Rights Act 1998*. London: Great Britain.

EQUALITY AND HUMAN RIGHTS COMMISSION, 2011. *Equality Act 2010 Employment Statutory Code of Practice*. London: HMSO.

EQUALITY AND HUMAN RIGHTS COMMISSION, 2011. *Equality Act 2010 Statutory Code of Practice Services, public functions and associations*. London: HMSO.

5. MONITORING COMPLIANCE

The Inclusion and Diversity Manager will prepare the publication of the Annual Equality Report to include assurance about the performance of the policy. Evidence will be drawn from Electronic Staff Records (ESR), employee relations' monitoring, staff and patient surveys, incident reporting, PALS and complaints. This will be reported to the Equality and Diversity Steering Group with improvement actions agreed for implementation. Other changes could result from: regulatory and policy changes, case law or settled claims of prohibited conduct within the Trust.

6. DISSEMINATION AND IMPLEMENTATION

This policy will be made available on the Trust intranet and internet, and publicised through Team Talk and Team Briefing). The policy will be discussed at leadership briefings and team meetings. Staff networks will be asked to discuss and publicise the policy at their meetings.

Training for all staff will be provided to ensure that prejudice is reduced and understanding is promoted. The Trust's training needs analysis will be updated to ensure that training is appropriate and effective. New staff will be made aware of the policy at the Trust induction.

7. CONSULTATION, APPROVAL, RATIFICATION & REVIEW

This policy will be approved by the HR Executive sub-group following consultation with the Trade Unions, HR, Staff Networks (BME and LGB&T), and ratified by Joint Consultative Negotiating Committee.

8. VERSION CONTROL

Record of Changes

Date	Version	Changes / Comments
------	---------	--------------------

9. APPENDIX A: PROHIBITED CONDUCT DEFINITIONS

The definitions here are a guide and the exact meaning is that given to them by the Equality Act 2010.

9.1 Direct discrimination

A person discriminates against another if, because of a protected characteristic, they treat a person less favourably than they treat or would treat others.

If the protected characteristic is age, it will not be discrimination if the treatment can be shown to be a proportionate means of achieving a legitimate aim.

If the protected characteristic is disability, it will not be discrimination to treat disabled people more favourably than people who are not disabled.

If the protected characteristic is sex less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding.

Discrimination by association

It is direct discrimination if an employer treats a worker less favourably because of the worker's association with another person who has a protected characteristic; however, this does not apply to marriage and civil partnership or pregnancy and maternity. In the case of pregnancy and maternity, a worker treated less favourably because of association with a pregnant woman, or a woman who has recently given birth, may have a claim for sex discrimination.

Discrimination by perception

It is also direct discrimination if an employer treats a worker less favourably because the employer mistakenly thinks that the worker has a protected characteristic. However, this does not apply to pregnancy and maternity or marriage and civil partnership.

Discrimination arising from disability

A person discriminates a disabled person if they are treated unfavourably because of something arising in consequence of their disability, and it cannot be shown that the treatment is a proportionate means of achieving a legitimate aim. This only applies if the person did not know, and could not reasonably have been expected to know about the disability.

Gender reassignment discrimination: cases of absence from work

In the work context a person discriminates against a transsexual person if, in relation to an absence that is because of gender reassignment, they treat them less favourably than they would if the absence was because of sickness or injury, or for some other reason and it is not reasonable for the transsexual person to be treated less favourably.

A person's absence is because of gender reassignment if it is because they are proposing to undergo, are undergoing or have undergone the process (or part of the process) to reassign their sex by changing physiological or other attributes of sex.

Pregnancy and maternity discrimination: non-work cases

A person discriminates against a woman only whilst delivering services or public functions if they treat her unfavourably because of a pregnancy of hers.

A person discriminates against a woman if, in the period of 26 weeks beginning with the day on which she gives birth, they treat her unfavourably because she has given birth, including treating her unfavourably because she is breast-feeding. If the period is more than 26 months then the treatment *may* still amount to sex discrimination.

For the purposes of this type of discrimination, the day on which a woman gives birth is the day on which she gives birth to a living child, or gives birth to a dead child (more than 24 weeks of the pregnancy having passed).

Pregnancy and maternity discrimination: work cases

A person discriminates against a woman at work if, in the protected period in relation to a pregnancy of hers, they treat her unfavourably because of her pregnancy, or because of illness suffered by her as a result of it (e.g. morning sickness).

A person discriminates against a woman if they treat her unfavourably because she is on compulsory maternity leave, or because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends either:

- if she is entitled to ordinary and additional maternity leave, at the end of the additional maternity leave period; or
- when she returns to work after giving birth, if that is earlier; or
- if she is not entitled to maternity leave, for example because she is not an employee, two weeks after the baby is born

Indirect discrimination

A person discriminates against another if they apply to them a 'provision, criterion or practice' that is discriminatory in relation to a protected characteristic (except pregnancy and maternity).

A provision, criterion or practice is discriminatory if:

- It is applied, or would be applied, to people who do not share the characteristic,
- It puts, or would put, people who share the characteristic at a particular disadvantage when compared with people who do not share it,
- It puts, or would put, a person with a protected characteristic at that disadvantage, and
- It cannot be shown to be a proportionate means of achieving a legitimate aim.

9.2 Failure to make reasonable adjustments for disabled people

The duty to make reasonable adjustments requires the Trust to take positive steps to ensure that disabled people can access and progress within services (e.g. healthcare) or work. This goes beyond simply avoiding discrimination and means taking steps to which non-disabled people are not entitled. For further information refer to the corresponding section in the main Equality and Human Rights Policy.

9.3 Harassment

A person harasses another if they engage in unwanted conduct related to a protected characteristic (except marriage and civil partnership or pregnancy and maternity), and the conduct has the purpose or effect of violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

9.4 Sexual Harassment

A person also harasses another if they engage in unwanted conduct of a sexual nature, and the conduct has the purpose or effect of violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

9.5 Rejection or submission

A person also harasses another if (i) they or another person engages in unwanted conduct of a sexual nature or that is related to gender reassignment or sex, (ii) the conduct has the purpose or effect of violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment; and, (iii) because of their rejection of or submission to the conduct, they treats them less favourably than they would treat them if they had not rejected or submitted to the conduct.

In deciding in each of the categories above whether conduct violates a person's dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment the following have to be taken into account: (a) the perception of the complainant; (b) the other circumstances of the case; and, (c) whether it is reasonable for the conduct to have that effect.

9.6 Victimisation

A person victimises another person if they subject them to a detriment because they do a protected act, or they believe that they have done, or may do, a protected act.

Protected acts are bringing proceedings; giving evidence or information in connection with such proceedings or doing any other thing for the purposes of or in connection or making an allegation (whether or not express) that they or another person has contravened the Equality Act 2010.

Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

9.7 Enquiries about disability and health

For the purposes of this section alone, whether or not a person has a disability is to be regarded as an aspect of that person's health.

It is a contravention enforceable as an unlawful act under the Equality Act 2010 for a person, to whom an application for work is made, to ask about the health of the applicant before offering them work (including allowing a contract worker to do the work) both conditionally or unconditionally, or including them in a pool of applicants to select a person to offer work to when a position later becomes available.

It is not a contravention merely to ask about an applicant's health; but what the Trust does in reliance on the information given in response may be a contravention of particular disability provisions for employment (refer to section 60 (11) of the Equality Act 2010 for further detail).

It is not a contravention to a question that the Trust asks in so far as asking the question is necessary for the purpose of

- Establishing whether an applicant will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on the Trust in relation to the applicant in connection with a requirement to undergo an assessment
- Establishing whether the applicant will be able to carry out a function that is intrinsic to the work concerned (once all reasonable adjustments have been made)
- Monitoring diversity in the range of persons applying to the Trust for work
- Taking positive action (see below)
- To establish whether an applicant is disabled where it is an occupational requirement of a particular role for the post-holder to have a particular disability (see 'occupational requirements' below).

For more information please refer to the Trust's recruitment policy

9.8 Breach of an equality clause

A woman doing equal work with a man in the same employment is entitled to equality in pay and other contractual terms, unless the Trust can show that there is a material reason for the difference which does not discriminate on the basis of her sex.

Where there is equal work, the Equality Act 2010 implies a sex equality clause automatically into the woman's contract of employment, modifying it where necessary to ensure her pay and all other contractual terms are no less favourable than the man's.

Where a woman doing equal work shows that she is receiving less pay or other less favourable terms in her contract, or identifies a contract term from which her comparator benefits and she does not (for example he is entitled to a company car and she is not), the Trust will have to demonstrate why this is. If the Trust is unable to show that the difference is due to a material factor that has nothing to do with her sex, then the equality clause takes effect.

These equal pay provisions apply to all contractual terms including wages and salaries, non-discretionary bonuses, holiday pay, sick pay, overtime, shift payments, and occupational pension benefits, and to non-monetary terms such as leave entitlements or access to sports and social benefits.

For more information please refer to the Trust's remuneration policy.

9.9 Breach of maternity equality clause

A woman should not receive lower pay or inferior contractual terms at work for a reason relating to her pregnancy and a maternity equality clause is implied into her contract to ensure this. There is no need to show equal work with a comparator in this situation.

The maternity equality clause applies to:

- the calculation of contractual maternity-related pay
- bonus payments during maternity leave, and
- pay increases following maternity leave

Maternity leave includes compulsory, ordinary and additional maternity leave. For more information please refer to the Trust's remuneration policy and the Special Leave Policy.

9.10 Relationships that have ended (prohibited conduct)

It is unlawful to discriminate or harass someone or fail to make a reasonable adjustment for a disabled person in any former relationship in which the Trust is prohibited from discriminating against or harassing another, such as in employment, or in the provision of goods, facilities and services. The prohibition is designed to ensure that unlawful treatment which results from – and is closely linked to – the existence of a relationship is still unlawful even though the relationship no longer exists.

9.11 Unlawful acts of employees and agents

It is unlawful for an employee or agent to contravene one of the prohibitions in the Equality Act where the contravention amounts to also having been done by the Trust as their employer or as their principal. This creates a potential personal liability for employees or agents for contraventions of the Act in addition (or separate to) the Trust liability. The Trust may avoid liability where it can show that it took all reasonable steps to prevent the employee or where the agent acted without its authority.

It is an offence for the Trust to knowingly or recklessly make a false statement about the lawfulness of a contravention under the Equality Act 2010 to an employee or agent.

9.12 Instructing, causing or inducing discrimination

It is unlawful for a person to instruct, cause or induce (directly or indirectly) someone else to discriminate against, harass or victimise another person because of a protected characteristic, or to attempt to do so.

Both the recipient of the instruction and the intended victim, whether or not the instruction was carried out, are protected provided they suffer a detriment as a result.

9.13 Aiding contraventions

It is unlawful for a person to help someone carry out an act which he or she knows is unlawful under the Equality Act 2010. However, this is not unlawful if the person giving assistance has been told that the act is lawful and he or she reasonably believes this to be true.

It is an offence, punishable by a fine of (at the time of writing) up to £5,000, knowingly or recklessly to make a false statement about the lawfulness of doing something under the Equality Act 2010.

10. APPENDIX B: REASONABLE ADJUSTMENT NOTES

(1) **'Provision, criterion or practice'** (in relation to reasonable adjustments and indirect discrimination) should be interpreted widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions.

A provision, criterion or practice may also include decisions to do something in the future such as a policy or criterion that has not yet been applied, as well as a 'one-off' or discretionary decision. This applies to the work of Committees and Boards within the Trust.

(2) **'Physical feature'** of a building or premise includes any feature arising from the design or construction of a building; any feature on the premises of any approach to, exit from, or access to a building; any fixtures, fittings, furnishing, furniture, equipment in or on premises; and any other physical element or quality. Avoiding a substantial disadvantage caused by a physical feature includes removing or altering it, or 'providing a reasonable means of avoiding it'.

Where a substantial disadvantage caused by a physical feature cannot be avoided, the Trust should consider a reasonable alternative method of providing a service. Relevant considerations may include whether the alternative offends the dignity of disabled people and the extent to which it causes disabled people inconvenience. For example, it would not be reasonable to assess a disabled patient using a wheelchair in a public area surrounded by screens because the door to the assessment room is too narrow to fit the wheelchair. This lack of privacy would quite clearly be likely to offend the dignity of that patient.

(3) **'Auxiliary aid'** is any aid or services which provides additional support or assistance to a disabled person (e.g. an interpreter, an extra member of staff, audio-visual fire alarms or a special pill dispenser)

The Trust is prohibited from requiring disabled people to pay to any extent the costs of making reasonable adjustments.

The duty to make reasonable adjustments is in relation to overcoming a **'substantial disadvantage'**, which is one that is more than minor or trivial. It is also a continuing duty and the Trust should keep the duty under regular review as what is reasonable may evolve over time.

Reasonable steps

The duty to make reasonable adjustments places the Trust under a responsibility to take such steps, as it is reasonable, in all the circumstances of the case, to have to take in order to make adjustments. Without being exhaustive, here are some of the factors that might be taken into account when considering what is reasonable:

- Whether taking any particular steps would be effective in overcoming the substantial disadvantage that disabled people face

- The extent to which it is practicable for the Trust to take the steps;
- The financial and other costs of making the adjustment;
- The extent of any disruption which taking the steps would cause;
- The extent of the Trust's financial and other resources;
- The amount of any resources already spent on making adjustments; and
- The availability of financial or other assistance (such as through the 'Access to Work' scheme operated by Jobcentre Plus)

In a work context, if making a particular adjustment would increase the risk to health and safety of any person (including the disabled worker in question) then this is a relevant factor in deciding whether it is reasonable to make that adjustment. Suitable and sufficient risk assessments will be used to help determine whether such risk is likely to arise.

Restrictions

A failure to comply with a duty to make reasonable adjustments cannot be justified; however there are restrictions on what is considered 'reasonable'. It is a question of 'reasonableness' that determines whether the adjustment has to be made. The question of the reasonableness of an adjustment is an objective one for the courts to determine.

There are two further general limits on the duty in specific contexts:

- As a service provider the Trust is not required to take any steps which would fundamentally alter the nature of the service or the nature of the Trust's trade or profession
- As a public authority exercising public functions the Trust is not required to take any steps that are outside of its powers.

11. APPENDIX C: HUMAN RIGHTS

The Trust takes a values based approach to putting human rights into practice based on fairness, respect, equality, dignity and autonomy (FREDA) (Department of Health 2008)

Table 1 Illustrating FREDA principles in practice

Value Fairness	Human right Right to a fair trial	Example policy or practice change Ensuring that there is a robust and fair process for dealing with concerns about the professional conduct or performance of a healthcare professional.
Respect	Right to respect for family and private life, home and correspondence	Respecting all diverse families, e.g. same-sex couples with children Avoid denying those detained or in residential care access to family without good reason.
Equality	Right not to be discriminated against in the enjoyment of other human rights	Ensuring that blind people have equal access to their written patient records Ensuring that people are not denied treatment to life saving treatment because of nationality.
Dignity	Right not to be tortured or treated in an inhuman or degrading way	Ensuring that there are sufficient staff members to promptly change wet sheets to reduce the risk of people suffering degrading treatment.
Autonomy	Right to respect for private life	Involving people in decisions made about their treatment and care.

Convention Rights

Convention rights refer to the rights and fundamental freedoms set out in schedule 1 of the Human Rights Act 1998. The main relevant rights are set out below (this is not an exclusive list):

Article 2. Right to life

This is an absolute right with no exceptions. Includes a duty not to take life; a duty to conduct a proper and open investigation into deaths; a duty to protect life by putting in place effective administrative systems (e.g. the training and regulation of doctors); and a duty to take positive steps to prevent the death of an individual who is under threat. For example, a patient (who is not detained) whose confusion is such that it is in their best interests to not be able to leave the ward without supervision.

Article 3. Prohibition of torture, inhuman or degrading treatment or punishment

Inhuman treatment means treatment causing severe mental or physical harm. Degrading treatment means treatment that is grossly humiliating and undignified. Inhuman or degrading treatment does not have to be deliberate

Article 4. Prohibition of slavery and forced labour

Article 5. Right to liberty and security

Article 6. Right to a fair trial

Article 7. No punishment without law

Article 8. Right to respect for private and family life, home and correspondence

Article 9. Freedom of thought, conscience and religion

Article 10. Freedom of expression

Article 11. Freedom of assembly and association

Article 12. Right to marry and found a family

Article 14. Prohibition of discrimination

Protocol 1, Article 1. Protection of property

Protocol 1, Article 2. Right to education

Protocol 1, Article 3. Right to free elections

Equality and Human Rights Analysis (EHRA)

Title(s): Equality and Diversity Policy

Aims: Review Existing Policy

Evidence

Please summarise any evidence about how the work may impact people either positively or negatively specifically linked to their characteristics.

- E.g. performance or survey data; focus groups; PALS; incident reviews; NICE guidance; research; good practice; demographic data
- Mark an 'X' in the columns for as many characteristics as are relevant

	Mark 'X' relevant characteristics								
	Age	Disability and Carers	Race	Religion or Belief	Sex	Pregnancy or Maternity	Gender Reassignment	Sexual Orientation	Other (e.g. Armed Forces)
Positive impacts: To ensure the Trust has access to be able to understand their role to ensure discrimination does not occur	X	X	X	X	X	X	X	X	X
Negative impacts:									

Equality Analysis

Please evaluate how the work may impact people with protected characteristics to meet the three **aims (A-C)** below, referencing any evidence identified above. If an aim is not relevant to your work, please explain why.

Aim A. Eliminate discrimination – Please evidence if the work could unlawfully discriminate:

- Include who is discriminated (e.g. disabled adults) and how. Include detailed reasons if it is lawful

No

Aim B. Advance equality of opportunity – Please evidence if the work:

- Minimises disadvantage – Does the work address any poorer outcomes for particular protected groups?
- Meets different needs – Does the work meet different protected groups' social, cultural or other needs?
- Encourages participation – Does the work target under-represented groups to increase involvement?

It seeks to inform staff

Aim C. Foster good relations – Please evidence if the work:

- Tackles prejudice – Does the work increase contact between groups to reduce negative attitudes?
- Promotes understanding – Does the work educate people about groups to change negative attitudes?

It seeks to inform staff

Human Rights Analysis

Mark 'X' against the relevant rights which are safeguarded (+) or breached (-) by the work:

	<input type="checkbox"/> + <input type="checkbox"/> -
Article 2. Right to life (e.g. The Deteriorating Patient policy, DNACPR or Clinical competencies)	<input type="checkbox"/> <input type="checkbox"/>
Article 3. Prohibition of torture, inhuman or degrading treatment (e.g. Consent or Safeguarding)	<input type="checkbox"/> <input type="checkbox"/>
Article 5. Right to liberty and security (e.g. Deprivation of Liberty or Restrictive Interventions)	<input type="checkbox"/> <input type="checkbox"/>
Article 8. Right to respect for private and family life, home and correspondence (e.g. Confidentiality, health records, carer involvement, correspondence or staff leave)	<input type="checkbox"/> <input type="checkbox"/>
Article 9. Freedom of thought, conscience and religion (e.g. End of Life Care or Prescribing)	<input type="checkbox"/> <input type="checkbox"/>
Article 10. Freedom of expression (e.g. Patient information or Raising Concerns policy)	<input type="checkbox"/> <input type="checkbox"/>
Article 12. Right to marry and found a family (e.g. Pregnancy testing procedure)	<input type="checkbox"/> <input type="checkbox"/>

Monitoring

Please describe how any impacts will be monitored: (e.g. annual policy review, audit, performance metric)

The policy will be reviewed in line with legislative change and improvements in the diversity and inclusion agenda. An Annual Board Equality report is submitted and work with WRES and in time WDES will monitor our progress

Outcome

Choose the final outcome(s) **a-d** of the analysis with an 'X' and explain the reasons in the space below:

- (a) [Continue the work](#)
- (b) [Change the work](#)
- (c) [Justify and continue the work](#)
- (d) [Stop the work](#)

Detailed reasons (copy this statement into your main paperwork and any committee papers – this is what you want the decision-makers to see):

Please score any risks to equality or human rights below and update your risk register:

Consequence score: 1 x Likelihood score: 1 = **Equality and Human Rights Risk Score:** 1

Assurance Statement: I have reviewed the evidence with rigour and an open-mind and am satisfied there has been due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations, and there is compliance with Section 149 of the Equality Act 2010.

Analysis Lead(s) names: <i>Naomi Bonetti</i>		Date: 26/04/18
Ratifying committee / body: JCNC		Date: 17/05/2018
Reviewer (office use):	Decision:	Date:

12.Improvement Plan

<u>Description of actions</u>	Date	Person	How will this be delivered?
<i>Add more rows if necessary</i>			

Send this form along with your main paperwork for consultation to sc-tr.equality@nhs.net

RATIFICATION CHECKLIST
Terms and Conditions Group

Policy Title: Equality and Diversity Policy (Review)
 Policy Author: Naomi Bonetti OD & Inclusion Facilitator
 Presented By: Naomi Bonetti OD & Inclusion Facilitator
 Purpose: Ratification

Checklist for Ratification			
1. Reason for Review:			
Reason for the Policy review: (please delete as appropriate)			
a) New Policy b) Revisions to current policy. Please state reasons e.g. compliance with new or updated legislation c) Review date due or expired (Please state date) 31/01/2018 d) Other – please state			
2. Summary			
Please give a brief overview of the following:			
The policy was due for review – only minor changes required			
3. Format			
Has the standard SCT template been used?	Yes / No (please delete)	Comments:	
4. Consultation			
Name	Group Member		Response Y/N
<i>Please state the consultation who has been consulted in the of this document:</i>	Terms and Conditions Group		Y
5. Dissemination/Implementation Process			
Will refresh the PULSE with the new policy on the new template			
6. Cost/Resource Implications			
Does this policy/procedures have any cost and/or resource implications?:			Y/N

Please provide details of the cost/resource implications: <i>eg training, equipment, additional staff</i>		
Has this been agreed by the accountable Director?		Y/N
Name	Job Title	Date
7. Approval		
Please state the name of the Group that has approved this document?	Name: Terms and Conditions Group	
Date of Group Approval:	Date: 3 May 2018	
8. Equality Analysis		
Has the Equality Impact Assessment been completed?	Yes/No (please delete)	Comments
9. Review		
Please state the timescale for review:		

DECISION OUTCOME AND RECOMMENDATIONS

For completion by the Chair of the Group or Committee considering ratification.

Is the Committee / Group satisfied and assured that due process has been followed in order to produce or review the Policy?	Yes	Comments:
Is the Committee / Group satisfied and assured with the consultation on the Policy?	Yes	Comments:
Does anybody (Group or individual) else need to be consulted prior to ratification?	No	Please state who:

Other Comments

Outcome:

Was the Policy Ratified?

Yes

Other comments:

.

Additional actions required for
ratification:

Ratified by: JCNC

Date: 17.05.2018