

Equal Opportunities in Employment v2.0

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Purpose:	Heart of England Foundation NHS Trust is committed to ensuring equality exists in all aspects of employment
Responsible Directorate:	Human Resources
Executive Sponsor:	Hazel Gunter, Director of Workforce
Document Author:	Workforce Engagement & Diversity Manager
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Related Controlled documents	Recruitment and Selection Policy Dignity at Work Policy Organisational Change Policy Leaver's Policy Appraisal Policy Sickness Absence (including Stress) Policy Disciplinary Policy and Procedure Grievance and Disputes Policy and Procedure Flexible Working Policy
BAME Relevant External Standards/ Legislation	<ul style="list-style-type: none"> • Equality Act 2010 • Sex Discrimination Act • Race Relations Act 1976 and Race Relations amendment Act 2003 • Equal Pay act 1970 (and its amendments 2003) • Rehabilitation Offenders Act 1974 • Disability Discrimination Act 2005 • The Employment Quality (religion or Belief) Regulations 2003 • The Employment Equality (sexual Orientation) Regulations 2003 • The Employment Equality (Age) Regulations 2006 Amendment Regulations 2008
Target Audience:	All staff
Further information:	Workforce Engagement & Diversity Manager

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Version History:

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2.0	TBC	Sally Lawson	Board	23/01/2017

Summary of changes from last version:

Change of Circulation and Scope to Introduction / Purpose and Policy Statement
Removal of Reason for development; Aims and Objectives and Standrads
Streamlined R&S, D&G, Training and Development, Polices and Procedures.
Removal of Appraisals and PDP, approach to dismissal and redundancy, Discipline
Included reasonable adjustment, definitions of protected charactersics and discrimination.

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1 Introduction / Purpose

The purpose of this policy is to ensure equality and remove unlawful discrimination so that everyone can fulfil their potential in an environment of fairness, dignity and respect where decisions are based on merit. This is in keeping with the Trust values of caring, accountable, supportive and honest.

The Trust is committed to ensuring equality exists in all aspects of employment regardless of age, disability, ethnic origin, sex, sexual orientation, gender identity, race, religion or belief, marriage or civil partnership, pregnancy or maternity. The Trust is committed to creating an inclusive environment by eliminating any form of discrimination. Equality of opportunity is vital if employees are to have a fair and equal chance of reaching their full potential and for the Trust to make the most effective use of its staff.

The Trust is striving to build a workforce which is valued and whose diversity reflects the communities it serves. By ensuring that our workforce reflects the local population we will increase the quality of service provided to patients. The Trust is committed to raising awareness of diversity to ensure equality of opportunity across the broad range of difference that characterises individuals, and to establish a supportive working environment where everyone is valued equally and treated with dignity and respect and believes that this commitment will lead to improved services for our patients.

2 Policy Statement

This document ensures that all staff are aware that the Trust will not tolerate any form of discrimination on the grounds of age, disability, ethnic origin, sex, sexual orientation, gender identity, race, religion or belief, marriage or civil partnership, pregnancy or maternity.

The Trust is committed to providing equality of opportunity and will strive to identify and remove any barriers to this. Where examples of poor practice are highlighted the Trust expects the relevant manager with responsibility for the area in which the issue arose to address this.

All managers and staff have the responsibility to be familiar with the procedures outlined in the Equal Opportunities Policy.

Staff should:

- Treat all colleagues with dignity and respect and ensure that they do not intentionally discriminate
- Challenge and/or report any discrimination that they witness.
- Managers must ensure they address issues where examples of poor practice are highlighted.
- Co-operate with any measures introduced to ensure equality and opportunity.

Staff should not:

- discriminate directly or indirectly against their colleagues.

- discrimination on the grounds of age, disability, ethnic origin, sex, sexual orientation, gender identity, race, religion or belief, marriage or civil partnership, pregnancy or maternity.

3 Definitions

3.1 Protected Characteristics

This policy is intended to protect employees from unfair treatment, regardless of their background. Our definition of 'protected characteristics' is based on those set out in the Equality Act 2010: You can find a full list with definitions [at Appendix B](#)

Age
Disability
Gender Reassignment
Marriage and civil partnership
Pregnancy and Maternity
Race
Religion and Belief
Sex
Sexual Orientation

3.2 Discrimination

Direct Discrimination is when a person is treated less favourably than another directly because of an aspect of their diversity e.g. because of a protected characteristic.

Indirect Discrimination arises where a provision, criterion or practice is applied equally to all individuals but has the effect of excluding, treating less favourably or causing a detriment to an individual or individuals within a particular group, and cannot be shown to be justifiable.

Associative Discrimination occurs when someone is treated less favourably than another person because they are linked to someone with a protected characteristic. For example, you cannot refuse to recruit somebody because you/ they are married to a foreign national or refuse to promote a person because they care for a relative with a disability.

Victimisation occurs when a person is treated badly because they have either made or supported a complaint under the Equality Act. However, protection under the victimisation section of the legislation does not apply if any allegations were not made in good faith.

Discrimination by Perception is direct discrimination where an individual is discriminated against because someone thinks they have a protected characteristic. It applies regardless of whether the person has the characteristic or not.

Harassment is unwanted conduct related to a protected characteristic which has the effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual. Any employee who feels that they have suffered

any form of harassment can make a complaint using the procedure outlined in the Dignity at Work Policy. Please refer to this policy for further information.

Third party harassment means that employers are potentially liable for harassment of their employees by people (third parties) who are not employees of their organisation, such as patients. The Trust will only be liable when; 1) harassment has occurred on at least two previous occasions and: 2) the Trust is aware that it has taken place and has not taken reasonable steps to prevent it from happening again.

Bullying includes persistent criticism, intimidation, personal abuse and/or ridicule which humiliates or demeans the individual involved,

An **Objective Justification** is when an otherwise discriminatory action can be objectively justified as a proportionate means of achieving a legitimate aim – that is, the way of achieving the aim is appropriate and necessary.

Affirmative Action is another term for Positive Action. It occurs when positive steps are taken to increase the participation of under-represented groups in the workplace or in uptake of services.

Positive Action is where an employer can take steps to encourage people from groups with different needs or with a past track record of disadvantage or low participation to apply for jobs. But it is illegal, for example, to choose a black candidate over a white candidate for a job solely on the basis of their colour. However, in trying to address a low representation of ethnic minorities in the work place positive action – such as advertising jobs through local BAME (Black, Asian and Minority Ethnic) groups, is acceptable.

4 Policy Requirements

4.1 Recruitment, Selection and Promotion

All recruitment and selection will take place in accordance with the recruitment and selection policy and associated procedures. This is to ensure that all appointments are made based on an individual's merits, abilities, experience and possession of the appropriate and necessary qualifications.

If a particular group is under represented in the workplace or at a particular level, positive action may be considered to encourage/promote applications from such groups but appointments will still be made on merit.

On occasions posts may be ringfenced for employees who are at risk of redundancy and suitable alternative employment is being sought or employees seeking redeployment due to ill health. This would mean that a vacant post would not be advertised if an individual, or individuals, on the redeployment list meet the essential criteria of the person specification.

Pre and post employment checks are consistently applied to the relevant posts and are undertaken in line with NHS Mandatory Employment Checking standards, UK Border Agency stipulations and relevant legislation i.e. Asylum and immigration Act 1996

4.2 Disciplinary and Grievance

Proven acts of discrimination carried out by an employee of the Trust against other employees, clients or members of the public, will result in disciplinary action, which may result in dismissal. This will also apply to employees who attempt to induce other employees to discriminate.

Failure to comply with this policy may be treated as a disciplinary offence.

The Trust will ensure that its disciplinary procedures are applied irrespective of age, sex, race, disability, sexual orientation, gender identity, ethnicity, nationality, religion or belief, employment status or domestic circumstances.

Where a member of staff feels that they have been treated less favourably than someone else in the same circumstances, they can use the grievance procedure to seek redress. Any such complaint will be thoroughly investigated and dealt with fairly and consistently.

4.3 Training and Development

It is important that everyone has equal access to development opportunities as identified in their appraisal and/or personal development plan.

The Trust is committed to ensuring that all staff have equal opportunity in accessing training and development relevant to their needs and their job role.

The Trust will provide appropriate training for those in managerial roles to ensure they comply with the principles and requirements of this policy.

Training materials will not stereotype, prejudice or discriminate in any way.

4.4 Policies and Procedures

All policies must be equality impact assessed prior to their implementation to determine whether a policy affects any group more or less favourably than another on the basis of a protected characteristic.

Where a group is affected more or less favourably there must be valid, legal and/or justifiable reasons

4.5 Cultural and Religious Needs

The Trust will try, where possible, to accommodate particular cultural or religious needs e.g. observing prayer time or wearing specific clothing. However, service needs, health and safety and infection control considerations will take priority as detailed for example in the Dress Code and Uniform Policy.

4.6 Disability

Where possible the Trust will endeavour to make reasonable adjustments for disabled staff or staff who become disabled during their employment with the Trust. The Trust will make every effort when employees become disabled to make sure they stay in employment

The Trust is committed to ensuring there is a mechanism in place to discuss, at any time, but at least once a year, with an employee with a disability, what the Trust and they can do to make sure they can develop and use their abilities.

It is vital that all managers and staff meet the above commitments. In particular managers will endeavour to make reasonable adjustments to accommodate applicants and employees who have a disability.

5 Reasonable Adjustment

Where a disabled person is at a substantial disadvantage in comparison with people who are not disabled, there is a duty to take all reasonable steps to remove that disadvantage by (i) changing provisions, criteria or practices, (ii) altering, removing or providing a reasonable alternative means of avoiding physical features and (iii) providing auxiliary aids. The effect of a reasonable adjustment should be to provide a service as close as reasonably possible to the standard offered to non-disabled people.

This is an **Anticipatory Duty** for service providers, i.e. all reasonable adjustments known to the service provider should be made in advance to assist potential disabled service users and not just to those who are known to the service provider.

What is considered **Reasonable** will depend on all the circumstances of the case including the size of an organisation and its resources, what is practicable, the effectiveness of what is being proposed and the likely disruption that would be caused by taking the measure in question as well as the availability of financial assistance

Proportionate refers to measures or actions that are appropriate and necessary. Whether something is proportionate in the circumstances will be a question of fact and involve weighing up the discriminatory impact of the action against the reasons for it, and asking if there is any other way of achieving the aim. Where a decision is taken that a requested adjustment is not reasonable or proportionate, the Trust would need to have evidence to back up this position.

Some examples of reasonable adjustments include:

- Providing information in Alternative Formats which are accessible to disabled people with specific impairments, for example Braille, audio description, subtitles and Easy Read.
- Fitting Hearing Loops that allow people with hearing aids to filter out distracting background noise in public places
- Fitting Wheelchair Ramps to allow access to different levels

- Providing screen readers for blind or partially sighted

6 Role and Responsibilities

6.1 Chief Executive

The Trust Board has overall responsibility for ensuring the policy is implemented.

6.2 Directors

The Director of Workforce will have specific responsibility for monitoring the policy on behalf of the Trust.

6.3 Local Managers

Managers are responsible for ensuring that all staff within their area are aware of their responsibilities as well as ensuring that their area/department and management practices comply with all aspects of the policy. Managers need to ensure that they put adequate monitoring systems in place so they are aware of their area/department's performance in relation to equal opportunities.

6.4 Other individuals

Staff side and Trade Union representatives will be familiar with this policy in order to provide advice and support to their members if requested to do so.

6.5 All Staff

Employees at all levels have a responsibility to actively promote equality of opportunity, comply with the requirements of this policy and challenge or raise concerns about any behaviour or conduct that they feel contravenes this policy using the appropriate channels

6.6 Specific groups / committees

The Trust has a number of special interest groups for staff and services users which support the promotion of the equal opportunities agenda i.e. inclusion steering group, Staff Networks.

7 Training

All staff, will be trained in Equality and Diversity in accordance with the Trust's mandatory training programme.

8 Monitoring Matrix

See **Appendix A**

9 References

Equality Act 2010

Appendix A – Monitoring Criteria

MONITORING OF IMPLEMENTATION	MONITORING LEAD	REPORTED TO PERSON/GROUP	MONITORING PROCESS	MONITORING FREQUENCY
<p>The implementation of the policy</p> <p>Number of complaints under this policy (although they will be dealt with through the Grievance process)</p> <p>Analysis of HR Casework</p>	<p>Deputy Director of Workforce</p>	<p>Operational Workforce Group</p> <p>And to Board</p>	<p>Annual report on workforce equality and diversity which covers:</p> <p>Make up of the workforce</p> <p>Number of complaints made under the grievance procedure on grounds of the 9 protected characteristics.</p> <p>Summary of trends and themes as well as any proposed action plans</p> <p>Data from the most recent staff survey on discrimination</p> <p>Analysis of HR case work</p>	<p>Annual</p>

Appendix B – Full definitions of the 9 protected characteristics

Age refers to a person belonging to a particular age (e.g. 32 year olds) or range of ages (e.g. 18 - 30 year olds). The Equality Act protects people over 18 from discrimination in employment. Under this policy, no employee or service user should be treated differently on the basis of their age unless it can be demonstrated that it is a proportionate means of meeting a legitimate goal, such as providing cancer screening for certain age groups based on medical research.

A person has a **Disability** if he or she has 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.

To qualify for protection from discrimination, a disabled person does not have to show that their impairment affects a particular 'capacity', such as mobility, speech, hearing or eyesight. Candidates for employment should not be asked about their health before offering them work.

The protected characteristic of **Gender Reassignment** applies to a person who is proposing to undergo, is undergoing or has undergone a process to change their sex. To qualify for protection from discrimination a transsexual person does not have to show that they are under medical supervision.

Marriage would refer to the union of two people of either the opposite or same sex which can be religious or civil partnership. Civil partners must be treated the same as married couples and neither group can be discriminated against for being married or part of a civil partnership.

Pregnancy is the condition of 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.

Women are protected from discrimination on the grounds of pregnancy and maternity during the period of pregnancy and any statutory maternity leave to which they are entitled. Employers must not take into account an employee's period of absence due to pregnancy-related illness when making a decision about employment, and should ensure that there are appropriate mechanisms for separately recording such illnesses.

Race refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins. A racial group can be made up of two or more different racial groups (for example, Black Britons).

Religion and Belief refers to religious and philosophical beliefs that affect a person's life choices or the way a person lives. A religion must have a clear structure and belief system. A belief means any religious or philosophical belief or lack of belief that guides a person's life choices. Humanism is a protected philosophical belief but political beliefs would not be protected.

Sex refers to a person's gender - a man or a woman.

Sexual Orientation categorises a person's sexual attraction towards their own sex, the opposite sex, or both sexes. Under this policy, no employee or service user should be treated unfairly on the basis of their sexual orientation.