

Equality and Diversity Policy



Publication code: OD-1014-016

Publication date: June 2019

Review date: June 2022

Equality and Diversity Policy

1. Policy purpose

This policy sets out how we will manage and advance equality and diversity within our organisation. We are committed to creating an inclusive and respectful workforce by preventing and eliminating unlawful and unfair discrimination, harassment and victimisation. We will prevent these in every way possible. This policy aims to provide clear advice on how to promote equality and diversity within our organisation and employee responsibility when using our key employment processes (for example, disciplinary, learning and development, managing sickness absence, maternity, paternity and adoption leave, LEAD, requests for flexible working and recruitment and selection).

2. Scope

This policy applies to all Care Inspectorate workers and job applicants.

3. Guiding principles

We will treat all workers and job applicants with dignity and respect recognising the value of each individual and embracing the values of diversity. Equality and diversity is not about treating everyone the same. It's about acknowledging and respecting differences and changing the way we work if necessary. We will ensure all our people management policies follow the guiding principles set out in this policy.

We aim to create a working environment where:

- all people have the opportunity and support to give their best
- there is no discrimination (direct or indirect), harassment or victimisation
- all decisions are merit based

In line with our organisational values, we will achieve this by:

- advancing equality and diversity
- encouraging good relations between all staff
- promoting positive attitudes
- eliminating harassment
- challenging unlawful discrimination (direct or indirect)

4. Monitoring and reporting

Responsibility for monitoring the application of this policy will rest with the Head of Organisational and Workforce Development and the Partnership Forum. This policy

will be reviewed on a three-yearly basis with amendments being made as appropriate in consultation with the Partnership Forum.

Equality and Diversity Procedure

Purpose

We have an overall responsibility to comply with the legislation designed to protect people's rights. Beyond our legal duties, we strive to promote equality and eliminate unfair treatment wherever we can. This is integral to our values:

- person- centred- we will put people at the heart of everything we do
- fairness- we will act fairly, be transparent and treat people equally
- respect- we will be respectful in all that we do
- integrity- we will be impartial and act to improve care for the people of Scotland
- efficiency- we will provide the best possible quality and public value from our work

The Equality Act came into effect in October 2010 to replace all the existing equality law at that time which included:

- The Equal Pay Act 1970
- The Sex Discrimination Act 1975
- The Race Relations Act 1976
- The Disability Discrimination Act 1995
- The Employment Equality (Religion or Belief) Regulations 2003
- The Employment Equality (Sexual Orientation) Regulations 2003
- The Employment Equality (Age) Regulations 2006

Although the obligations under the Equality Act remain largely the same, the new legislation offers extended protection to a wide range of groups that face discrimination and strengthens particular aspects of equality law.

The Equality Act covers the following nine equality strands which are now called 'protected characteristics' and are summarised below.

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

A more detailed summary of the protected characteristics is included in appendix one.

As a public sector organisation we have additional obligations under The Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012 which is:

- to report progress on mainstreaming the equality duty
- to publish equality outcomes and report progress
- to assess and review policies and practices
- to gather and use employee information
- to publish gender pay gap information
- to publish statements on equal pay and occupational segregation
- to consider award criteria and conditions in relation to public procurement
- to publish equality impact assessments and demonstrate monitoring of impacts
- to publish in a manner that is accessible.

The Equality Act containing the Public Sector Equality Duty are extremely important pieces of equality legislation. However, it does not cover all aspects of discrimination, harassment and victimisation. Other groups of individuals require protection through The Rehabilitation of Offenders Act 1974 and the Trade Union and Labour Relations (Consolidation) Act 1992. Additional information is provided in appendix one.

What is discrimination?

Unfair discrimination in employment occurs because of prejudice, misconception and stereotyping which hinders the proper consideration of an individual's talents and potential. Discrimination can take many forms; it can be direct, indirect, intentional or unintentional. It can also include discriminating against others because they associate with someone with a protected characteristic (for example, someone who cares for a disabled relative). Even if someone does not have a protected characteristic but is perceived to have and is treated unfairly because of it they too can claim that they were discriminated against. An example of this would be someone who is perceived to be gay but is not. Whether it was intentional or unintentional often does not matter, what matters is whether the employer acted unlawfully or not. By law, employers must not discriminate against, harass or victimise people who work for them. Appendix one explains the four distinct types of discrimination and provides case studies as examples of the different types of discrimination.

Managers may also find it helpful to refer to the Guidance for Managers as this details how they should apply the principles of equality of diversity to our employment processes. The policy follows the legal framework relating to aspects of equalities within the workplace and makes sure that we meet our statutory obligations. The policy also ensures we maintain the spirit of partnership working between the trade unions and ourselves.

5. When to use this procedure

The Equality and Diversity policy and procedure is a reference document for our managers and employees. The principles of equality and diversity underpin all our people management policies and are at the heart of all our employment processes and every interaction we have.

6. Roles and responsibilities

We all have a role to play in promoting equality and diversity. Everyone regardless of their role is required to help us meet our commitment to provide equal opportunities in employment and avoid unlawful discrimination.

Employees should report any discrimination, harassment or victimisation (this includes any from a third party) to their manager so that they can take appropriate action. If the employee feels they cannot raise this with their line manager then they can either email humanresources@careinspectorate.gov.scot or make a formal complaint under The Dignity at Work policy. We will allocate a Human Resources Adviser to support the investigation. Further information about this can be found in the Dignity at Work policy. We will take any complaint seriously and will seek to resolve any issues or concerns an employee raises.

The Care Inspectorate

As an employer, we are legally responsible for acts of discrimination, harassment and victimisation carried out by our employees in the course of their employment.

Our key responsibilities are to:

- eliminate discrimination, harassment and victimisation in employment
- advance equality and diversity between all employees
- foster good relations between all employees
- remove or minimise disadvantages suffered by employees because of a protected characteristic, for example, disability, gender or race
- take steps to meet the needs of employees who share a relevant protected characteristic that are different from the needs of employees who do not share it

Senior managers and line managers

Our managers need to comply with the law and ensure their own behaviour and conduct models best practice. This means that they are:

- open to having dialogue with employees
- respectful of others and any differences, for example, cultural differences
- considerate of all requests and are proactive in trying to make any reasonable accommodations (where possible)

- look at appropriate ways to help balance employee needs against operational demands
- serious about tackling discrimination, harassment and victimisation. Willing to take the appropriate steps to correct behaviour or actions that do not comply with the Equality and Diversity policy

Managers must also ensure that all employees who are responsible for developing plans, policies and proposals have had equalities impact training.

Employees

Employees can be held personally liable as well as, or instead of, the Care Inspectorate for any act of unlawful discrimination.

We have a zero tolerance approach towards discrimination. This means that discriminating and colluding in discrimination are disciplinary offences. In some cases it may be regarded as gross misconduct which will result in dismissal. If an employee has a professional registration with a separate body we may have a duty to make this body aware of the allegations and the outcome from our investigation. Employees who commit serious acts of harassment may be guilty of a criminal offence.

Agents

If another person is carrying out instructions on behalf of the Care Inspectorate (for example volunteers) the law refers to them as 'agents' of the Care Inspectorate. If an agent does something that amounts to unlawful discrimination, harassment or victimisation we may be legally responsible for their acts. It does not matter whether or not we knew about it or approved what they did.

Third parties

Our work means that we have employees that work with the public (providers, service users and carers). In a situation where an employee feels that they have suffered discrimination or harassment by a third party then they should complete accident incident form HS-0917-014. Following this, we will advise the employee of the action taken to ensure it does not happen again in the future.

7. Equality and diversity monitoring

We have a legal obligation under The Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012 to publish information on equalities. In addition to our legal obligations it is also helpful for us to measure the effectiveness of our Equality and Diversity policy. For example, we are interested in:

- How many job applicants with a particular protected characteristic apply for each job, are short-listed and we appoint.

- How many employees have a particular protected characteristic and the level we employ them at
- The satisfaction levels of employees with a particular protected characteristic
- The number of complaints of discrimination, harassment or victimisation rose through the Dignity at Work procedure
- The number of incident forms

We do not use the equalities information employees and job applicants provide when applying for a job to make decisions about appointments. We separate the monitoring forms from their application forms so recruiting managers will never see this information. Monitoring will help to highlight possible inequalities. This means we can investigate their underlying cause and remove any unfairness or disadvantage. The information required for monitoring is relevant to the aims of the policy and does not infringe the Data Protection Act 1998.

Information and support for those involved

We appreciate that if you feel that you have suffered (or witnessed) any acts of discrimination, harassment or victimisation then you will require support. If appropriate you should raise this with your line manager or contact Human Resources. The following guidance provides some additional information which will help you decide how best to proceed:

- Code of Conduct
- Dignity at work policy
- Managers Guidance on Equality and Diversity
- Managers Guidance on Disability
- The Dealing with Violence and Aggression policy
- Whistleblowing guidance
- Contact Human Resources if you would like to request some training on Equality and Diversity
- If you would like to discuss any sensitive matters with a trained counsellor then try our Employee Assistance Programme on 0800 587 5670 or visit their website www.sg.helpeap.com

8. The legal background

- The Equality Act (2010)
- The Equality Act (2010) (Specific Duties) (Scotland) Regulations 2012
- Rehabilitation of Offenders Act (1974)
- Trade Union and Labour Relations (Consolidation) Act (1992)
- For further information, please refer to appendix one which provides in depth accounts for some of the legal terminology.

Appendix 1. The legal background

The Equality Act and protected characteristics

Age

The Equality Act protects people of all ages young and old. When writing job adverts, recruiting managers must avoid using language that might imply the post is for a person of a certain age. Essentially words or phrases which describe how work will be done should be avoided, as this can then characterise the work according to ageist assumptions for example, 'requires a mature approach' or 'energetic'. You can consider age where not doing this would mean you break another law. For instance if the law said that an employee had to be a particular age to do something and you discovered that they were not that age, you could dismiss them without this being unlawful discrimination. An example would be an employee holding a driving licence, which requires the employee to be at least 17 years of age.

Disability

The law considers an employee to have a disability 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. Disability also covers employees with progressive conditions such as HIV, multiple sclerosis and cancer. The law protects people with mental illness in the same way as people with a physical impairment. *'Long term' is defined as 12 months or more, e.g. a breathing condition that has developed from a lung infection.

Disability and reasonable adjustments

The key provision in relation to disability discrimination remains the duty to make reasonable adjustments to help a disabled employee to overcome disadvantage resulting from impairment. This could be a policy, physical feature or providing an auxiliary aid for example, hearing induction loops, special computer hardware or software. Further information is available in the Disability Guidance for Managers.

Disability and indirect discrimination

It would be discriminatory to treat a disabled employee unfavourably due to something arising in consequence of the disability and this cannot be justified for example, a tendency to make spelling mistakes arising from dyslexia. This type of discrimination is unlawful, if the manager knows, or could reasonably be expected to know, that the employee has a disability. We would expect our managers to consider making reasonable adjustments to remove any disadvantage.

Gender reassignment

A person has the protected characteristic of gender reassignment if the person is in the process of transitioning from one gender to another.

Marriage and civil partnership

The Equality Act protects employees who are married or in a civil partnership against discrimination. The law treats them both the same.

Pregnancy and maternity

The law protects against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any statutory maternity leave she is entitled to. A risk assessment is required for pregnant employees and breastfeeding mothers. We cannot dismiss a woman because she is pregnant or for any reason connected with her pregnancy or maternity leave.

Race

The Equality Act's definition of 'race' includes colour, nationality (including citizenship) and ethnic or national origins.

Religion or belief

Managers and employees must always be respectful of the religion and beliefs of others. The Equality Act states that 'religion' includes any religion. It also includes a lack of religion. A number of factors apply when deciding what is a 'religion or belief' (for example, collective worship, a clear belief system or a profound belief affecting a way of life or view of the world). The definition is deliberately not precise in defining what does and does not count as a religion or similar belief, however, case law is developing in this area.

A belief means any religious or philosophical belief (or a lack of such belief.) For example, a belief in man-made climate change, and in a moral duty to live in a way that mitigates its effects, could constitute a philosophical belief but to be protected, a belief must satisfy various criteria. The belief must be:

- genuinely held
- not merely an opinion based on information currently available
- related to a weighty and substantial aspect of human life and behaviour
- persuasive, serious, cohesive and important; and

- worthy of respect in a democratic society and not incompatible with human dignity or in conflict with the fundamental rights of others

The Equality Act does not protect political beliefs.

Sex

The Equality Act protects both males and females.

Sexual orientation

Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes we will not make assumptions or employment decisions based on the sexual orientation or perceived sexual orientation of an employee or discriminate against them in any way.

Rehabilitation of Offenders Act 1974

When recruiting we have a duty to treat all applicants fairly. Under the Rehabilitation of Offenders Act 1974, ex-offenders have the right not to be discriminated against when their convictions become 'spent'. Broadly speaking, anyone convicted of a criminal offence and who is not convicted of a further offence during a specified period (the 'rehabilitation period') becomes a 'rehabilitated person'. This means that they don't have to declare the conviction for most purposes (such as applying for a job). The law protects employees against dismissal or exclusion from employment and employers cannot prejudice a person in any way because of a spent conviction. A conviction resulting in a prison sentence of more than 30 months can never become spent.

The Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2003 lists work where spent convictions can be asked about - broadly relating to work with children, the sick and disabled people. Enhanced disclosure checks are required for jobs relating to work with children and adults at risk. This process allows employers to see spent convictions and consider the information for recruitment decisions.

Trade Union and Labour Relations (Consolidation) Act 1992

No one should suffer victimisation on the grounds of trade union membership or non-membership. This is unlawful under the Trade Union and Labour Relations (Consolidation) Act 1992.

This document is available in alternative formats on request (for example, community languages, Braille, audio, large print)

Policy Audit

Title	Partnership Forum Approval Date	Version Control	Change (and reason)	Date of change	Version Control
Equality & Diversity	September 2014	V1.0	<ul style="list-style-type: none"> • Changed OD references to HR. • Changed PDRS references to LEAD • Updated policies to reflect new policies • Added 12 months to definition of disability 	June 2019	V.1.1

