

# EQUALITY ESSENTIALS



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## Introduction

The Equality Act 2010 is a landmark piece of legislation that we and other trade unions campaigned for. The act contains both equality protections in employment and equality obligations for service providers, such as the NHS. In difficult economic times such as these it can be tempting to see equality and diversity as an 'add-on', in other words, something that is not essential. This is not the case. Equality and diversity are vital to providing a fair and inclusive service.

Equality issues are particularly important for our members working in the NHS and for the NHS providing services. Over 99% of our members are female and there are particular issues for women at work, for example pregnancy and maternity rights, equal pay and flexible working. Nearly half of our members are over 45 and there are particular issues for older workers, for example shift working, health conditions and access to training and development.

In 2013, we published a report about the disproportionate number of black and minority ethnic (BME) midwives involved in disciplinary proceedings in the NHS in London. The high levels of discrimination against BME staff in the NHS has been widely evidenced in the report by Middlesex University 'The Snowy White Peaks of the NHS: a survey of discrimination in governance and leadership and the potential impact on patient care in London and England'<sup>1</sup> below) and in the report 'Making the Difference: diversity and inclusion in the NHS'<sup>2</sup> below) by The King's Fund. These reports led to the introduction of the Workplace Race Equality Standard.

Also, Stonewall's report 'Unhealthy Attitudes: the treatment of LGBT people within health and social care services'<sup>3</sup> below) highlighted some major gaps in the knowledge and training of staff relating to lesbian, gay, bisexual and transgender (LGBT) people, which is resulting in unfair treatment of both LGBT patients and colleagues.

It is very important that RCM workplace representatives are aware of the Equality Act 2010 and its contents. This can help them support and protect our members in the workplace and make sure they are not discriminated against.

As well as protecting employees, the Equality Act also protects service users as it sets out obligations which providers of services, such as maternity services in the NHS, must meet.

<sup>1</sup> The Snowy White Peaks of the NHS: a survey of discrimination in governance and leadership and the potential impact on patient care in London and England' (2014) Roger Kline, Middlesex University London

<sup>2</sup> Making the Difference: diversity and inclusion in the NHS (2015) Michael West, Jeremy Dawson and Mandip Kaur, The King's Fund

<sup>3</sup> Unhealthy Attitudes: the treatment of LGBT people within health and social care services (2015) Stonewall

So, heads of midwifery also need to be aware of the Equality Act 2010 to make sure that they are providing services that are inclusive and treat service users fairly and with dignity.

These things are not unrelated. To be able to provide a truly inclusive service and an NHS which treats all service users with respect, dignity and compassion, NHS workplaces need to be inclusive and the workforce need to be treated with respect, dignity and compassion. Investment in NHS staff is an investment in NHS care.

Investing in a diverse NHS workforce allows the NHS to deliver a more inclusive service and improve care for service users. Equality is about creating a fairer society where everybody has the opportunity to achieve their potential. Diversity is about recognising and valuing difference in its broadest sense. Inclusion is about an individual's experience within the workplace, and in wider society, and the extent to which they feel valued and included.

This publication gives you:

- information about the nine protected characteristics in the Equality Act 2010
- information about different types of discrimination
- information about the public sector equality duty
- information about equality and diversity in the NHS
- information about equality impact assessments
- information for RCM workplace representatives
- some myths and facts about equality and diversity.

**This guide has been prepared for members of the Royal College of Midwives (RCM). For information on becoming a member, please visit [www.rcm.org.uk](http://www.rcm.org.uk).**

**We would like to thank the TUC for help with this publication.**

**This publication is part of our equality publications series. If you have any questions about this publication or any other publications in the equality series, please contact Amy Leversidge, by emailing [amy.leversidge@rcm.org.uk](mailto:amy.leversidge@rcm.org.uk)**



## Nine protected characteristics

The Equality Act 2010 brought together all the various discrimination laws to create a simpler and more comprehensive framework. The Equality Act 2010 replaced the following legislation.

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Employment Equality (Age) Regulations 2006, Part 2
- Equality Act 2006
- Equality Act (Sexual Orientation) Regulations 2007

The Equality Act 2010 defines nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The box below sets out detailed information for each of the protected characteristics.

### 1. Age

Employees are protected from discrimination, harassment and victimisation because of their age, including if they are younger or older than a relevant and comparable employee (for example, another employee in a similar role). For example, if an employer has a training policy that excludes any employees over the age of 60, this is likely to be discriminatory. Age is the only protected characteristic that allows employers to directly discriminate as long as they can justify that the discrimination is a proportionate means of meeting a legitimate aim, for example having a minimum age requirement for certain jobs. The Equality Act does allow for some employment benefits to be based on length of service.

### 2. Disability

Employees are protected from discrimination, harassment and victimisation because of disability. This also includes protection from discrimination by association and perception (this is where someone is treated unfavourably because they are associated with someone who has a disability or they are considered to have a disability, even if they do not), and discrimination arising from a disability (this is where someone is treated unfavourably because of something connected with their disability). A person is disabled if they have a physical or mental condition that has a long-term (usually lasting more than one year) and substantial negative effect on their ability to carry out normal day-to-day activities.

Long-term health conditions such as cancer, HIV, multiple sclerosis and other progressive conditions (those which worsen over time) are considered disabilities. Employers should make reasonable adjustments so people with a disability are able to carry out the duties of their job. A reasonable adjustment is a change or adaptation to the physical or working environment that removes or reduces the effect of the person's disability in the workplace. The employee should be involved in deciding what reasonable adjustment is necessary.

### 3. Gender reassignment

Employees are protected from discrimination, harassment and victimisation relating to gender reassignment. A person who proposes to, starts, or has completed a process to change his or her gender is referred to as a transsexual.

### 4. Marriage and civil partnership

Employees are protected from discrimination and victimisation because of whether or not they are married or in a civil partnership.

### 5. Pregnancy and maternity

Employees are protected from discrimination and victimisation because they are pregnant or for taking or wanting to take maternity leave. A woman who is pregnant or on maternity leave must not be treated unfavourably because of her pregnancy or maternity leave. This means that there is no need for her to show that she has been treated less favourably than a man, or a woman who was not pregnant, just that she was treated less favourably than she would have been had she not been pregnant or wanting to take maternity leave.

### 6. Race

Employees are protected from discrimination, harassment and victimisation because of their race, which includes colour, ethnic origin, national origin and nationality.

### 7. Religion or belief

Employees are protected from discrimination, harassment and victimisation because of their religion or belief. In the Equality Act, religion means any religion with a clear structure and belief system, and a belief means any religious or philosophical belief.

### 8. Sex

Employees are protected from discrimination, harassment and victimisation because of their sex (gender) or their sexuality. This includes unwanted behaviour that is of a sexual nature or relates to the protected characteristics of sex or gender reassignment.

### 9. Sexual orientation

Employees are protected from discrimination, harassment and victimisation because of their sexuality. This protected characteristic applies equally to people who are bisexual, gay, heterosexual or lesbian.

In the Equality Act 2010 no protected characteristic has a higher importance than any other.

## Types of discrimination

The Equality Act covers four main types of discrimination.

### 1. Direct discrimination

Direct discrimination is when someone is treated less favourably as a direct result of a protected characteristic they have. Direct discrimination by association is when someone is treated less favourably because of a protected characteristic of someone they are associated with, for example a friend, family member or a colleague. Direct discrimination by perception is when someone is treated less favourably because of a protected characteristic they are thought to have, regardless of whether this is correct. Direct discrimination could involve a decision not to employ someone, or to dismiss them or withhold promotion or training, because of one of the nine protected characteristics.

### 2. Indirect discrimination

Indirect discrimination is normally less obvious than direct discrimination. It can happen when a policy or practice is applied equally to a group, but this has the effect of putting people who share a protected characteristic at a particular disadvantage when compared with others in the group, and the employer cannot justify this. This means that if an employee wanted to make a case of indirect discrimination, they would have to show how they have been personally disadvantaged and how others who share the same protected characteristic would also be disadvantaged.

### 3. Harassment

Harassment is unwanted behaviour and must be related to a relevant protected characteristic (marriage and civil partnership and pregnancy and maternity are not covered) or be of a sexual nature. The behaviour must have the purpose or effect of failing to respect a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person. This can include bullying and undermining behaviour. Harassment can be spoken, written or physical. It could be based on the perception of a protected characteristic (others thinking that a person has a protected characteristic) or an association with a protected characteristic (being associated with a person who has a protected characteristic). Whether behaviour is harassment depends on how the person who is being harassed feels and whether it is reasonable for them to feel that way, not how the person who is accused of harassment feels.

### 4. Victimisation

Victimisation is when an employee is treated less favourably than others because they have made an allegation of discrimination, they have supported a complaint of discrimination or given evidence relating to a complaint of discrimination, or they have raised a grievance concerning equality or discrimination. It would also be victimisation if someone is treated less favourably because they are suspected of doing one or more of these things.

There is no minimum length of continuous employment necessary for a discrimination claim to be made to an employment tribunal. Protection starts from when a role is advertised through to an employee's last day of employment, and beyond to when an employer is writing references for a previous employee.

However, there may be exceptional circumstances where it may be within the law for an employer to specify that applicants for a job must have a particular protected characteristic, for example an acting job may require a young female actor for a particular role.

Also, there may be rare occasions when an employer may act in a way that is discriminatory but it is justified because it is a 'proportionate means of achieving a legitimate aim'. Direct discrimination because of age is the only form of direct discrimination that can be justified. Employers may be able to justify indirect discrimination on the grounds of the other protected characteristics, but only if they can prove this is a proportionate means of achieving a legitimate aim. The employer would also need to show that they looked for another way of achieving the aim that was less discriminatory.

Under the Equality Act 2010, an employer can take 'positive action' to help employees or job applicants they think are at a disadvantage because of a protected characteristic, they have a protected characteristic that is under-represented in the organisation, or they have specific needs connected to a protected characteristic. If an employer wants to take positive action they must have evidence to prove that it is reasonable and proportionate, and they must not discriminate against others.

The Equality Act 2010 also says that an employer must make reasonable adjustments to allow a disabled person to be able to carry out their duties at work. Non-disabled employees cannot claim they have been discriminated against as a result of being treated less favourably because of the reasonable adjustments given to a disabled colleague.

An employer must consider making reasonable adjustments for a disabled employee or job applicant if:

- the employer becomes aware of the person's disability
- a disabled employee or job applicant asks for the adjustments to be made
- a disabled employee is having difficulty with any part of their job
- an employee's sickness record, or delay in returning to work, is linked to their disability.



An adjustment is reasonable if:

- it is practical for the employer to make
- the employer has the money to pay for it
- it will be effective in overcoming the 'disadvantage' in the workplace.

When considering a reasonable adjustment for a disabled employee or job applicant, an employer should meet with the person to discuss what can be done to support them. Although an employer has a legal duty to make reasonable adjustments, there may be times when suggested changes are unreasonable and it is within the law for the employer to refuse to make them.

## Public sector equality duty

The public sector equality duty (PSED) is an important collective tool in providing equality in the workplace. It replaces the former equality duties relating to race, gender and disability. The first of the old duties, the race equality duty in 2001, came out of the Macpherson Report on the murder of a black teenager called Stephen Lawrence. Following failures in the investigation of Stephen Lawrence's murder, the report revealed institutional racism in the Metropolitan Police. It was clear that a radical rethink was needed in the approach that public sector organisations were taking towards dealing with discrimination and racism.

Before the race equality duty was introduced, the emphasis of equality legislation was on correcting cases of discrimination and harassment after they happened, not preventing them from happening in the first place. The race equality duty was designed to shift responsibility from individuals to organisations. For the first time this placed an obligation on public authorities to positively promote equality, not merely to avoid discrimination.

Following the introduction of the race duty, it was clear that progress could also be made on other areas of equality by introducing other similar duties. The disability equality duty came into force in 2006, followed by the gender equality duty in 2007.

The public sector equality duty was developed to provide consistency between the equality duties and to cover all of the protected characteristics. In summary, under the public sector equality duty, organisations in the public sector must have due regard to the need to:

- prevent unlawful discrimination, harassment and victimisation and other behaviour that is not allowed under the act
- provide equal opportunities for people who share a protected characteristic and those who do not
- promote good relations between people who share a protected characteristic and those who do not.

The act explains that having due regard for providing equality involves:

- removing or reducing as far as possible disadvantages suffered by people due to their protected characteristics;
- taking steps to meet the needs of people from protected groups if these are different from the needs of other people; and
- encouraging people from protected groups to take part in public life or in other activities where they are under-represented.

The Equality Act 2010 states that meeting the equality duty may involve treating some people more favourably than others.

The equality duty covers the following protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. Public authorities also need to have due regard to the need to prevent unlawful discrimination against someone because of whether or not they are married or in a civil partnership. This means that the first aim of the duty applies to this characteristic but that the other aims (providing equal opportunities and promoting good relations) do not apply.

The broad purpose of the equality duty is to include equality and good relations in public services. Service providers need to consider how the service can affect different groups in different ways and how they can act to make sure that the effect does not lead to more inequality and poor outcomes. The general equality duty requires organisations to consider how they could positively contribute to providing and promoting equality and good relations and to reflect this when designing policies and delivering services, including internal policies, and continue to keep these issues under review.

By law, all organisations in the public sector must keep to the general equality duty, but it also makes good sense for the NHS to keep to it. To be able to provide a truly inclusive service and an NHS which treats all service users with respect, dignity and compassion, NHS workplaces need to be inclusive and staff need to be treated with respect, dignity and compassion. Investment in NHS staff is an investment in NHS care. A workforce that has a supportive working environment is more productive. Many organisations have found it beneficial to draw on a broader range of talent and to better represent the community that they serve, and this should also result in decision-making and policy development being based on a wide range of views and experiences.

## Equality and diversity in the NHS

The NHS Staff Council has overall responsibility for the Agenda for Change pay system and has representatives from both employers and trade unions, including us. The NHS Staff Council has several subgroups including the Equality and Diversity Group. The Equality and Diversity Group is a technical group that works to make sure that NHS staff work in an inclusive environment and that Agenda for Change not only meets equality and diversity legislation but also that it is an example of best practice. The group works in partnership and prepares an annual work programme that is agreed by the Executive of the NHS Staff Council.

The Equality and Diversity Group works to make sure that equality, diversity and inclusion continue to be at the heart of the NHS strategy. The group offers a broad range of advice, guidance and practical support for trusts. Investing in a diverse NHS workforce allows the NHS to deliver a more inclusive service and improve care for service users. Equality is about creating a fairer society where everybody has the opportunity to achieve their potential. Diversity is about recognising and valuing difference in its broadest sense. Inclusion is about an individual's experience within the workplace, and in wider society, and the extent to which they feel valued and included.

The Equality and Diversity Group has developed an **equal pay toolkit** that aims to guide local employers and staff representatives through their legal responsibilities relating to equal pay audits. The toolkit can be used for all NHS staff, including medical staff and senior managers.

The Equality and Diversity Group has also developed, and updated, the **Equality Delivery System** (EDS and EDS2). This is a system that helps NHS organisations improve the services they provide for their local communities and provide better working environments, free of discrimination, for those who work in the NHS, while meeting the requirements of the Equality Act 2010. The updated version, EDS2, helps organisations to meet the public sector equality duty and is more streamlined and simpler to use.

## Equality impact assessments

As discussed in the section on the public sector equality duty, NHS organisations must analyse the effect of existing and new policies and practices in relation to equality to consider:

- whether there are any unintended consequences for some groups
- whether the policy will be fully effective for all target groups.



The analysis should involve using equality information, and the results of working with protected groups and others, to understand the actual or potential effect of the policy. This can then help NHS organisations identify practical steps to tackle any negative effects or discrimination, to provide equality and to promote good relations.

When analysing how policies do or could affect equality, an EQUALITY IMPACT ASSESSMENT (EqIA) is a useful tool. It helps organisations examine the main functions and policies to see whether they could affect people differently. Their purpose is to identify and deal with existing or potential inequalities.

Ideally, EqIAs should cover all nine protected characteristics and will help organisations gain a better understanding of a policy, by:

- considering the current situation
- deciding the aims and intended outcomes of a function or policy
- considering what evidence there is to support the decision and identifying any gaps in the policies that lead to people being excluded
- making sure organisations make an informed decision.

RCM workplace representatives should make sure they investigate the findings of EqIAs when a new policy is introduced, for example when a service is restructured or a new workforce policy is introduced.

RCM workplace representatives should check for any disproportionate negative effect or potential effect on particular groups, and talk to the employers about how the policy should be amended, if the employers cannot justify the policy.

## The role of RCM workplace representatives

Unions have always led the drive for equality at work, whether through the struggle for equal pay, through tackling racism or working for equal access to learning and skills.

RCM workplace representatives should familiarise themselves with information in this publication so that they can fight to eliminate all forms of harassment, prejudice and unfair discrimination. We expect RCM workplace representatives to be committed to equality, diversity and inclusivity.

RCM workplace representatives have a key role to play in:

- promoting equal rights for all members, by working to negotiate with employers on policies and procedures that provide equality and do not lead to one group being disproportionately disadvantaged
- creating a supportive atmosphere at work, and in the union, in which all members feel that they can take part and that their opinions are valued
- challenging instances of harassment and discrimination and making sure complaints are dealt with effectively
- acting as a role model in treating everyone fairly.

Here are some top tips for what to do if a member approaches you for support.

- ✓ Take action as quickly as possible.
- ✓ Make sure you understand the facts and encourage the member to collect evidence of the discrimination or harassment they are suffering. They should keep a record of any incidents, including the time, date and location, what was said or done and whether there were any witnesses.
- ✓ Find out if there is any evidence of similar incidents against colleagues in the past or evidence that a group of employees are being put at a disadvantage by a particular policy or practice.
- ✓ support the member in raising the issue with their manager (or someone higher up if it is their manager who is responsible for the alleged discrimination or harassment) or the HR department. If they feel unable to raise the matter themselves, they may want you to raise it on their behalf.
- ✓ If it is an issue that cannot be dealt with informally, support the member in raising a grievance through formal workplace procedures.
- ✓ If you are dealing with a disabled member, consider whether there is any reasonable adjustment that could be made to ease the problem. Make sure the member is involved in discussions about what adjustments are most likely to be effective.
- ✓ If it looks likely that the issue is not going to be dealt with within the workplace, ask us for advice if you have not done so already. Remember that there are time limits for bringing tribunal claims.
- ✓ Try to make sure lessons are learned from any complaints of discrimination or harassment and that, where possible, policies or actions are put in place to prevent similar cases arising in the future.



## Myths and facts

There are a number of myths about equality and diversity. Here are a few of the common myths you might hear about equality and diversity and ways that you can respond.

Myth	Response
<b>Equality and diversity is just political correctness gone mad!</b>	<b>False!</b> Equality and diversity is about more than just trying not to offend people. It's about fairness in employment and access to services and it's about everyone being free from discrimination.
<b>It's only a problem for under-represented groups</b>	<b>False!</b> The Equality Act 2010 applies to all individuals, service providers and employers. As described above, there are nine protected characteristics. We all have a gender, an age, an ethnicity, so it applies to everyone. Ultimately, fairness helps everyone.
<b>Equality and diversity is just about ticking boxes</b>	<b>False!</b> When done right, this is about making a real difference to people's lives. Organisations collect information but that is just the start – they use that information to pinpoint issues and find solutions.
<b>There is no evidence that it affects patient care</b>	<b>False!</b> People perform best when they can be themselves. Putting equality and diversity at the heart of everything the NHS does will improve conditions for all staff and service users.
<b>Improving equality and diversity costs a lot of money</b>	<b>False!</b> In fact, it is expensive for the NHS not to aim for diversity in the workforce, and improving diversity can have a positive effect on its profits or losses.
<b>They just want to find out my personal information</b>	<b>False!</b> It is really important to provide your equality-monitoring information when asked so that organisations can make sure they are treating people fairly and are free from discrimination. If they don't know they have a problem, they can't find a solution. And they won't know they have a problem if they don't collect the information.
<b>Treating people equally means treating everyone the same</b>	<b>False!</b> People aren't the same. Everyone is different and sometimes people need some adjustments to be able to take part. It is not about treating people equally, it is about making sure everyone has the opportunity to take part.
<b>Equality and diversity gives people special treatment</b>	<b>False!</b> People don't want special treatment. They want to be treated fairly. There are nine characteristics, including age, gender, pregnancy, disability and so on. At some point in all our lives we may need some help because of one of these characteristics, for example being allowed to take time off to attend antenatal appointments when we are pregnant. It is not about special treatment, it is about fair treatment.

## Further information

**TUC** (<https://www.tuc.org.uk/equality-issues>)

**The Equality and Human Rights Commission** (<http://www.equalityhumanrights.com/>)

**ACAS** (<http://www.acas.org.uk/index.aspx?articleid=1363>)

**NHS Terms and Conditions of Service Handbook** (2015) ([http://www.nhsemployers.org/~media/Employers/Documents/Pay%20and%20reward/AfC\\_tc\\_of\\_service\\_handbook\\_fb.pdf](http://www.nhsemployers.org/~media/Employers/Documents/Pay%20and%20reward/AfC_tc_of_service_handbook_fb.pdf))

**The RCOG/RCM Joint Statement on Undermining and Bullying in the Workplace** (2015) ([www.rcm.org.uk](http://www.rcm.org.uk))

**Standing Up for High Standards** ([www.rcm.org.uk](http://www.rcm.org.uk))

**A Refreshed Equality Delivery System for the NHS** (2013) (<https://www.england.nhs.uk/wp-content/uploads/2013/11/eds-nov131.pdf>)

**The Snowy White Peaks of the NHS: a survey of discrimination in governance and leadership and the potential impact on patient care in London and England'** (2014) Roger Kline, Middlesex University London

**Making the Difference: diversity and inclusion in the NHS** (2015) Michael West, Jeremy Dawson and Mandip Kaur, The King's Fund

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