

CONTROLLED DOCUMENT

Fair Employment Policy – Diverse, Equal and Inclusive

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1. Policy Statement

- 1.1. University Hospitals Birmingham NHS Foundation Trust (the 'Trust') aims to create an organisation that values diversity and promotes equal opportunities and inclusion regardless of age, disability, sex, sexual orientation, gender reassignment, race, religion or belief, marriage or civil partnership, pregnancy or maternity, or socio-economic background.
- 1.2. The purpose of the Policy is to promote equality and remove discrimination so that everyone can fulfil their full potential in an environment of fairness, dignity and respect where decisions are consistently based on merit. This is in keeping with the Trust's value of being respectful, the NHS People Plan's commitment to equality, diversity and inclusion, and reflects the provisions of the Equality Act 2010.

2. Scope

This policy covers all staff working for the Trust including employees, contractors, volunteers, students, locum, bank and agency staff and honorary contract holders.

3. Policy Framework

3.1. This section describes the broad framework for the Fair Employment Policy including an overview of the relevant legislation. It also describes the key principles in relation to equal opportunities within the Trust.

3.2. Protected Characteristics

The Equality Act 2010 covers the following protected characteristics:

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

3.3 Socio-economic Background

The Trust additionally recognises socio-economic background as a focus area to help people and communities overcome inequalities, and has a role to play to work towards achieving this aim.

3.4 Definitions in accordance with the Equality Act 2010

Direct Discrimination is where someone is treated less favourably because of a protected characteristic.

Discrimination by Association is the direct discrimination of someone because of their association with someone with a protected characteristic.

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

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

Indirect Discrimination is where there is a rule, condition or policy applies to everyone but disadvantages a group with a particular characteristic and then a person within that group.

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 and to progress within the organisation.

The Public Sector Equality Duty (PSED) requires public bodies to have due regard to the need to eliminate discrimination, advance equality of opportunity and foster good relations between different people when carrying out their activities. Public sector organisations are required to publish information to demonstrate compliance with the PSED annually and to prepare and publish specific and measurable equality objectives at least every four years.

The Equality Delivery System 2 (EDS2) is a tool kit to help NHS organisations improve the services they provide for their local

communities, consider health inequalities in their locality and provide better working environments, free of discrimination, for those who work in the NHS. The purpose of the EDS2 is to drive up equality performance and embed it into mainstream NHS business.

Victimisation is where someone is treated less favourably because they have either made or supported a complaint under the Equality Act 2010.

Workforce Race Equality Standard (WRES) is a mandatory NHS standard which aims to ensure race equality and fair treatment for its Black, Asian and Minority Ethnic (BAME) workforce. NHS organisations are required to report on 9 indicators and these then gauge the current state of race equality within the organisation and track what progress is being made to identify and promote talented BAME staff as well as helping to eliminate wider aspects of discrimination in the treatment of BAME staff.

Workforce Disability Equality Standard (WDES) is a set of ten specific measures (metrics) which enables NHS organisations to compare the workplace and career experiences of Disabled and non-disabled staff. NHS trusts use the metrics data to develop and publish an action plan. Year on year comparison enables trusts to demonstrate progress against the indicators of disability equality.

Gender Pay Gap - Under the provisions of the Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017, the Trust is legally required to publish an annual gender pay gap report including mean and median gender pay gaps, gender bonus pay gaps and a breakdown of the Trust's workforce by pay quartiles by gender.

3.4 Recruitment, Selection and Promotion

3.4.1 All recruitment and selection, including promotion, should take place in accordance with the associated Recruitment and Selection Policy and associated Procedure. This is to ensure all appointments are made fairly on the basis of the best candidate for the job.

3.4.2 If a particular group is under represented in the local working population 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.

- 3.4.3 The Trust is committed to inclusive recruitment and selection, including making reasonable adjustments for staff with a disability as part of the process.
- 3.4.4 Recruitment and selection training materials will challenge conscious and unconscious bias in selection. At least one member of a recruiting panel will be required to have undertaken the required recruitment and selection training.
- 3.4.5 Pre and post-employment checks are consistently applied across all groups and are undertaken in line with NHS mandatory Employment Check Standards, UK Visas and Immigration stipulations and relevant legislation i.e. Asylum and Immigration Act 1996.

3.5 Training and Development

- 3.5.1 Training materials must not stereotype, prejudice or discriminate in any way. All staff will have access to training and development opportunities based on the requirements of their role.
- 3.5.2 Reasonable adjustments to training will be made for staff with disabilities/conditions that affect their ability to learn e.g. training materials provided in vision friendly formats on request.

3.6 Organisational Change

- 3.6.1 Any decisions regarding organisational change will be made on the basis of service need and skills/experience, not protected characteristics.
- 3.6.2 All proposed organisational changes must be equality impact assessed prior to consultation to ascertain whether the proposed change may affect any group more or less favourably than another on the basis of a protected characteristic.
- 3.6.3 Where a group is affected more or less favourably there must be valid, legal and/or justifiable reasons.

3.7 Policies and Procedures

- 3.7.1 In line with the associated Development and Management of Controlled Documents Policy and Procedure all policies must be equality impact assessed prior to their implementation to ascertain whether the policy may affect any group more or less

favourably than another on the basis of a protected characteristic.

3.7.2 Where a group with a shared protected characteristic is affected more or less favourably there must be valid, legal and/or objectively justifiable reasons.

3.8 Cultural and Religious Needs

The Trust will endeavour to accommodate particular cultural or religious needs including, but not limited to, observing prayer time or wearing specific clothing. However, service needs, health and safety and infection control requirements will take priority as set out in the relevant policies and procedures e.g. Dress and Uniform Policy.

3.9 Disability

3.9.1 The Trust is committed to the Disability Confident Scheme, and attracting, recruiting and retaining staff with a disability. Further details can be found in the Recruitment and Selection Procedure.

3.9.2 Where possible, the Trust will make reasonable adjustments in the workplace for staff with a disability, those whose disability worsens during their employment, or staff who become disabled during their employment with the Trust. Reasonable adjustments must be reviewed regularly.

3.9.3 The Trust will ensure that managers and staff are aware of organisations that can support staff to remain in employment i.e. Access to Work and the Business Disability Forum.

3.9.4 Where it is not possible for a member of staff to remain in their current job as a result of their disability, the Trust will look for alternative jobs and/or retraining. Where appropriate, applications for ill health retirement can be supported; however the decision as to whether the application will be granted ultimately lies with NHS Pensions. Dismissal will only be considered as a last resort.

3.10 Transgender (Trans) and Non-Binary Staff

3.10.1 'Trans' is an umbrella term used to cover gender identity such as transgender, non-binary, bi-gendered, or non-gendered.

3.10.2 The Trust will not tolerate any unlawful discrimination against Trans staff and has in place standards and procedures to

support Trans staff, including whilst transitioning in the workplace. Please refer to the Supporting Individuals who are Transgender (Trans) and Non-Binary Policy and associated procedures.

3.10.3 Staff must be treated as the gender they identify with.

3.11 Disciplinary and Grievance

3.11.1 Unlawful discriminatory behaviour of any kind will not be tolerated, and any breach of this policy will be dealt with under the Disciplinary Procedure.

3.11.2 Where a member of staff feels that they have been treated less favourably than someone else in the same circumstances, they should approach their line manager in the first instance. If the matter remains unresolved they may wish to seek advice and support from a number of sources including the Workforce Directorate staff, Inclusion Team, Staff Networks, Freedom to Speak up Guardian and Confidential Contacts, or the Fairness Taskforce and, where necessary, use the Grievance Procedure to seek redress. Any such complaint will be thoroughly investigated and dealt with fairly and consistently.

4. Duties

4.1. Director of Workforce

The Director of Workforce will:

- 4.1.1 Approve all procedural documents associated with this policy, and any amendments to such documents, and is responsible for ensuring that such documents are compliant with this policy;
- 4.1.2 Ensure all workforce policies, procedures and practices are consistent with legislative requirements and equality, inclusion and diversity best practice;
- 4.1.3 Ensure training is provided on workforce policies, procedures and practices to ensure implementation is fair, consistent and in line with Trust values;
- 4.1.4 Ensure Workforce diversity statistics including leavers are reported to the Board of Directors on an annual basis.
- 4.1.5 Ensure compliance with this policy.

4.2 Chief Nurse

The Chief Nurse will ensure that:

- 4.2.1 Workforce diversity data is reported both to the Board of Directors and publicly on an annual basis in line with the Public Sector Equality Duty of the Equality Act 2010, the Workforce Race Equality Standard, the Workforce Disability Equality Standard and any other statutory reporting requirements that the Trust must complete.
- 4.2.2 That equality and inclusion are promoted throughout the Trust, and that relevant training is made available.

4.3 Line Managers

Anyone who has responsibility for staff must ensure that:

- 4.3.1 They apply all Trust policies fairly, consistently and without discrimination;
- 4.3.2 All complaints of discrimination are properly addressed and dealt with sensitively, confidentially, and in a timely manner; and
- 4.3.3 They challenge any incidence of discrimination.

4.4 Trade Union representatives

Trade Union representatives will:

- 4.4.1 Be familiar with this policy and appropriately trained in order to provide advice and support to their members if requested to do so; and
- 4.4.2 Assist in raising awareness and communication of the policy.

4.5 All Staff

All Staff must:

- 4.5.1 Treat all colleagues with dignity and respect and ensure that they do not unlawfully discriminate;
- 4.5.2 Challenge and/or report any discrimination that they witness; and

4.5.3 Co-operate with any measures introduced to ensure equality of opportunity.

5. Implementation and Monitoring

5.1 Implementation

5.1.1 This policy will be available on the Trust's Intranet site. It will also be disseminated through the management structure within the Trust.

5.1.2 Workforce Directorate staff and the Inclusion Team will provide consistent advice and guidance to managers and staff on the application of this policy.

5.1.3 All new starters to the Trust will be trained in inclusion at Corporate Induction.

5.1.4 Equality and Diversity training is available for all staff and managers via the Education Department and the Inclusion Team.

5.2 Monitoring

Please see Appendix A for the Monitoring Matrix.

6. References

Advisory, Conciliation and Arbitration Service (ACAS)

Equality Act 2010 (Specific Duties) Regulations 2011

Equality and Human Rights Commission

NHS Equality Delivery System II

NHS Mandatory Employment Checking Standards

NHS People Plan

Public Sector Equality Duty 2011

UK Border Agency stipulations and relevant legislation i.e. Asylum and Immigration Act 1996.

Workforce Disability Equality Standard

Workforce Race Equality Standard

7. Associated Policy and Procedural Documentation

Adoption Procedure

Consultant Recruitment Procedure

Controlled Documents Policy and Procedure

Data Protection and Confidentiality Policy

Dignity at Work (Bullying and Harassment) Procedure

Disciplinary Procedure

Dress and Uniform Policy

Employee Relations Policy

Employment Checking Procedure

Flexible Working Procedure

Grievance Procedure

Health and Safety Policy and Procedure

Maintaining High Professional Standards in the Modern NHS Policy and Procedure

Maternity Procedure

Organisational Change Procedure

Performance Improvement Procedure

Recruitment and Employment Life Cycle Policy

Recruitment and Selection of Medical and Dental Posts Procedure

Retirement Procedure

Sickness Absence and Attendance Procedure

Supporting Individuals who are Transgender (Trans) and Non- Binary Policy and Procedure

Work Life Balance Policy

MONITORING MATRIX

MONITORING OF IMPLEMENTATION	MONITORING LEAD	REPORTED TO PERSON/GROUP	MONITORING PROCESS	MONITORING FREQUENCY
Workforce statistics including leavers	Director of Workforce	Trust Board	Workforce statistics reported via Annual Workforce report	Annual
Workforce diversity statistics	Chief Nurse	Trust Board	Workforce diversity statistics reported via EDS2	Annual
Workforce Race Equality Standard report	Deputy Director of Inclusion, Wellbeing and Social Cohesion	Trust Board	Workforce Race Equality Standard report and action plan	Annual
Workforce Disability Equality Standard report	Deputy Director of Inclusion, Wellbeing and Social Cohesion	Trust Board	Workforce Disability Equality Standard report and action plan	Annual
Gender Pay Gap report	Director of Workforce	Trust Board	Gender pay gap report and action plan	Annual
Equality Impact Assessments (EIAs) for policies	Director of Corporate Affairs	Policy Review Group	EIAs for policies presented at Policy Review Group.	Monthly