



Sex



A. EXTENT OF DISCRIMINATION

Although CSP members work in a female dominated profession, women can experience discrimination and disadvantage in a variety of ways both in the workforce and as members of wider society. Men too can experience difficulties as a minority group within the profession and, due to stereotyped views about gender roles, can sometimes find it more difficult to access leave for family or caring purposes. Both women and men have health issues that have an impact at work, and both can experience domestic violence.

- Despite equal pay legislation, the gender pay gap is 8.6 % amongst full time employees (2018).
- 2.5 million people in the UK are combining work with unpaid caring for a partner, relative or friend who is ill, frail or has a disability. Women's working hours decrease after having children and they suffer a significant penalty in the job market
- Many women experience sexual harassment at work
- One in four women will experience domestic violence in their lifetime, and 85 % of victims of domestic violence are women.¹⁰
- The Coronavirus pandemic threatens to turn the clock back on gender equality – the partial opening of schools and nurseries has seen women take on most of the unpaid care work, reducing their hours, or giving up paid work.

B. ARGUING FOR EQUALITY

Although physiotherapy is still a female dominated profession, there has been an increase in the percentage of men joining its ranks in recent years. In 2019, 22 % of CSP members were men, compared with 19 % in 2009.

Equal Pay is not an issue in the NHS because everyone on the same grade gets paid the same basic rate.

Although male and female pay rates no longer exist, there could still be hidden discrimination in pay systems and practices. The Equality Act provides that there should be equal pay for work of equal value – i.e. where two jobs are different but they are considered to be of a similar level of skill, effort and responsibility. Job evaluation is the method used to ensure equal pay for equal value.

One of the key aims of Agenda for Change was to deliver a pay system which met equal pay for work of equal value criteria and the CSP spent considerable time and resources to ensure this happened. The CSP view is that Agenda for Change is not discriminatory and the job evaluation scheme which underpins it is an analytical scheme which satisfies the Equal Pay Act. CSP will continue to support members employed outside the NHS and not covered by Agenda for Change, who believe they have a justified claim for equal pay.

There is a lot of banter at work but its good-natured and everyone joins in, so it was surprising to hear that one of our female colleagues had taken offence and complained of sexual harassment. No one here is sexist – I think a lot of women are just far too sensitive and ready to take offence these days.

It's important to enjoy work and be able to share a joke with colleagues. But take time to think about how others may perceive what you are saying. When deciding if there has been harassment, it is not so much whether someone intended to cause offence when they told the joke or made the comment that counts: it's how it's likely to be perceived by others, particularly the person it was aimed at. Don't expect them always to say when they've been offended either – victims of harassment often don't feel confident enough to challenge it, especially when there's a big group of people laughing along, so they may pretend to share the joke as a way of coping.

Equalities are all right when times are good but in times of economic recession and austerity we need to be focusing on protecting jobs and pay.

Equalities are relevant at all times. Discrimination can get worse when times are tough and part of the union's role is to ensure that certain groups are not targeted in an economic down turn, for example by being required to take lower pay or work shorter hours, or by being selected

for redundancy. Redundancy selection solely on “last in, first out” could indirectly discriminate against younger workers, women or BAME staff.

C. RIGHTS FOR WORKING PARENTS

Over the past twenty years the Government has introduced a wide range of measures aimed at helping working parents and carers balance their employment with family and caring responsibilities. They include the right to request flexible working, which was extended in 2014 to all employees with at least 26 weeks’ service, with or without dependants.

The changes have been driven by the increasing number of working women and the need to retain their skills, as well as a more general demand among employees for a better balance between work and home life, as the last 25 years have seen a dramatic rise in the number of families where both parents work.

Most NHS employees will already benefit from rights to maternity, paternity and adoption leave that are better than the statutory schemes, but union representatives can always raise the issues in negotiations and try to improve upon the existing provision.

The CSP has provided detailed guidance in individual ERUS information papers on flexible working, maternity leave and pay, paternity leave, parental leave, adoption leave, and part-timers’ rights. Additionally there is a hazards checklist for pregnant mothers. This section of the Equality Toolkit should be read in conjunction with these more detailed information papers, all of which are available on www.csp.org.uk

Business benefits

Good employers recognise that it is good practice to provide opportunities for their employees to achieve a better work-life balance.

The NHS Terms and Conditions Handbook states that “flexible working should be part of an integrated approach to the organisation of work and the healthy work/life balance of staff”.

Employers benefit by:

- retaining skilled staff
- saving on recruitment costs
- increased productivity and morale
- reduced absenteeism

Employees benefit by:

- More control over their working lives
- Improved professional relationships
- Better health and self-esteem

D. HEALTH AT WORK

Fertility treatment

One in seven couples has problems conceiving naturally. Although both men and women experience infertility, the treatment for women is more invasive and takes longer. It is time-consuming, expensive if not done through the NHS, and can be very stressful.

Employers can be unsupportive, and it can be difficult to obtain paid time off for treatment and appointments. There is currently no legal right to paid time off and no express protection from unfair treatment or dismissal for absence from work due to infertility treatment.

Employees undergoing IVF are protected from pregnancy discrimination as soon as they become pregnant. Although the moment of pregnancy (and therefore the start of protection from pregnancy discrimination) is not always clear, Acas says employers should treat the protected period as starting as soon as the embryo has been transferred. A woman is still

protected against pregnancy discrimination for two weeks after finding out that her embryo transfer was unsuccessful.

Although there is no legal right to time off for IVF treatment, CSP stewards may, through their Joint Negotiating Committees, be able to negotiate for paid fertility treatment leave in the workplace. The cost of such a policy to the employer would be low as it would only affect a small proportion of the workforce at any one time. The policy would be of benefit to members as it would reduce the stress and exhaustion involved in undergoing treatment.

A policy on paid infertility treatment should ideally include the following points:

- Paid time for infertility treatments subject to proof of appointments
- Time off for partners
- Time off should not be treated as sickness absence
- No impact on pay, performance ratings, or promotion
- Strict confidentiality
- 10 days leave available on a flexible basis
- Paid time off for counselling where treatment has failed.

Employees undergoing IVF are entitled to have their privacy respected.

Pregnancy and new mothers at work

Employers have a duty to pregnant and new mothers at work under Health and Safety Regulations. It is important that CSP reps and managers are aware of these obligations and use health and safety law to ensure that women in this position are working in a safe environment. For full guidance, see CSP Health and Safety Guidance Paper No.6: Reproductive and Post-birth Health Hazards.

The menopause

The perimenopause and menopause are a relevant issue to both employers and trade unions as they affect the health of women workers, usually at some point between the ages of 40 and 55. Campaigners

and the TUC are increasingly raising this as a significant health and safety issue for women. These are normal part of ageing which involves changes in oestrogen and hormonal levels over a number of years leading up to the menopause.

Some women experience few symptoms whilst others can find that their lives are severely disrupted and that they require medical advice and treatment. Symptoms can include:

- Intermittent and heavy periods
- Hot flushes
- Increased sweating
- Headaches
- Lack of energy
- Anxiety and/or depression
- Irritability and mood swings
- Poor concentration
- Short-term memory issues
- Sleeplessness
- Dizziness
- Palpitations
- Nausea and/or vomiting

There are a number of measures that should be taken at work, which will help a woman experiencing the menopause. These are:

- Provision of suitable clothing
- Access to cold drinking water
- Adjustable workplace temperatures including ventilation
- Flexible rest breaks
- Access to washing and toilet facilities
- Provision of sanitary facilities

If these are not already available in your workplace, then they are best negotiated with the employer, rather than leaving individual women

to raise the issue. Negotiators should also seek to have the following included in a policy on the menopause and perimenopause:

- 1** Risk assessments should be carried out with reference to the menopause/perimenopause
- 2** Paid leave should be available for medical treatment and appointments
- 3** The ability to work on a flexible basis as part of an organisation's flexible working policy or through a separate policy on the menopause/perimenopause
- 4** Signposting for advice and help on the menopause/perimenopause
- 5** Training for managers on the issues

Cancer screening

Breast cancer is the most common cancer in the UK, despite the fact that it is a rare disease in men. 55,000 new cases are diagnosed each year in the UK. Breast cancer is strongly related to age, with rates rising steadily from around age 30-34. The majority of cases are in women over 50, but it is the most commonly diagnosed cancer in women under 35.

The NHS National Breast Screening Programme provides free screening for all women over the age of 50 and women between the ages of 50 and 70 are invited every three years for a free mammogram. With better screening and new treatments there has been a significant improvement in survival rates, from 52% surviving for five years in the 1970s to 90% in the 21st century

These statistics on cancer survival show the importance of women being aware of the importance of cancer screening tests such as breast and smear tests and that they are able to attend appointments for these to be carried out.

Stewards should seek to negotiate a policy on cancer screening, including paid time off for screening and any necessary follow-up appointments.

Prostate cancer is the most common male cancer in the UK, accounting for around a quarter of male cancers. Each year, nearly 47,700 men are diagnosed and more than 10,000 die from the disease. Cases in

men under 50 are rare. There are no routine screening programmes for prostate cancer currently in the UK, which is arguably a good reason to start campaigning for a screening programme along similar lines to breast and cervical screening.

A more common health problem for men is BPH, or non-cancerous enlargement of the prostate gland, a condition that affects about 3.2 million men in the UK – over one third of those aged over 50 years. BPH almost exclusively affects men over 40 because prostate size increases slowly with age. It can have an impact in the workplace because of the need for individuals to be near the toilet, and there is a need for sensitive workplace policies to deal with this.

Domestic violence

Both men and women can experience domestic violence, and violence can occur in both heterosexual and same-sex relationships. However, women are around twice as likely to have experienced domestic abuse than men (7.9% compared with 4.2%) and an estimated 1.3 million women experienced domestic abuse in 2017-18. Research suggests that when coercive and controlling behaviour is taken into account, the differential between male and female victims is even more stark. The cost of domestic abuse is estimated to be approximately £66 billion in England and Wales for the year ending March 2017 (Domestic Abuse Bill 2019 Fact Sheet, Home Office 2019 & ONS, 2019).

It is very difficult for women to leave the fear of violence and abuse behind when at work, and it is likely that the problems will eventually surface in the workplace. That is why domestic violence is an issue for both employers and unions.

The Fawcett Society has highlighted the added dangers for women as a result of the Coronavirus pandemic, which will have left many women trapped in their homes, self-isolating with an abusive partner.

Women's Aid 12 have identified several ways in which the effects of domestic violence are felt in the workplace:

- Colleagues may have to cover for other workers while they are off

- They may have to fend off the abuser if they make unwanted phone calls or visits
- People experiencing domestic violence may receive harassing phone calls, faxes, emails or visits at work; they may be followed, stalked or attacked while travelling to or from work
- Children using workplace crèche facilities may be vulnerable
- Colleagues may be targeted for questioning about the woman's contact details or location

NHS Employers acknowledge that domestic violence will affect a significant proportion of healthcare staff and that the impact will not be confined to the home. "Colleagues may also be placed in danger by perpetrators. Similarly, it is likely that amongst our staff are some perpetrators of domestic abuse. Therefore, identifying those members of staff who abuse is paramount to ensure the safety of people with whom he/she comes into contact.¹³

NHS Employers has a model domestic violence policy on their website which provides a detailed template for trusts.¹⁴

Stewards should raise the issue at Joint Negotiating Committee meetings and use this template when participating in negotiations or reviews of Trust domestic violence policies.

E. EQUALITY ACT 2010

The Equality Act outlaws discrimination on the grounds of sex in employment, education and the provision of goods and services. It applies to both males and females or groups of people like women and girls or men and boys. The Act says that you must not be discriminated against because:

- you are (or are not) a particular sex
- someone thinks you are the opposite sex (also known as discrimination by perception)
- you are connected to someone of a particular sex (this is known as discrimination by association).

Although the Equality Act outlaws discrimination against both men and women, there is an important exception. Men cannot claim sex discrimination because an employer gives special treatment to women in connection with pregnancy or childbirth, as long as that special treatment goes no further than is needed to compensate the woman for the work-related disadvantage caused by being pregnant or taking maternity leave.

Who is covered?

The Act applies in England, Wales, and Scotland. Broadly similar regulations are in force in Northern Ireland. They are available at: **www.equalityni.org/Legislation**.

In respect of employment, the legislation applies to workers regardless of their length of service or their working hours. It applies to all stages of the employment relationship and can apply to discrimination after employment has ended, e.g. it prohibits employers from refusing to give a reference on the grounds of sex. Equally, a job applicant can make a claim to an Employment Tribunal (ET) – it is not necessary for them to have been employed by the organisation to make a claim of discrimination under the Equality Act (or equivalent legislation in Northern Ireland).

How sex discrimination arises

The Act defines four main forms of unlawful sex discrimination.

Direct discrimination

Direct sex discrimination occurs when an employer treats one person less favourably than they treat (or would treat) another of the opposite sex in a similar situation.

There is no defence to discrimination because of sex. The law does not allow employers to justify less favourable treatment of workers for this reason.

EXAMPLES:

- A man with inferior qualifications, and/or less experience than a woman is appointed to the job or promotion for which they both applied
- A woman is told that she would not be considered for a job because “women don’t like dirty work or working without easy access to toilet facilities”.

It is also direct discrimination to treat a woman less favourably because she is pregnant or has taken maternity leave. This includes a pregnancy-related illness.

In cases of sex discrimination, a woman can only succeed if she can show that she was treated less favourably than a man in an equivalent situation was (or would have been) treated.

The position is different in cases of pregnancy or maternity discrimination. Here, the woman must show that she was treated unfavourably because of her pregnancy or because she accessed (or tried to access) her maternity rights, for example by asking for time off for antenatal appointments or to take maternity leave. She does not need to compare herself with a man, or show that a man would have been treated differently, in order to succeed in this kind of claim.

Indirect sex discrimination

Indirect sex discrimination applies to policies and practices which, in reality, disadvantage one sex considerably more than another, although on the face of it, they seem to apply to both sexes equally. For example, the requirement to work full-time might be more of a bar for women than men.

EXAMPLES:

- Any benefit which results from length of service may work against women who have taken time out from work to bring up their children
- Mobility clauses may discriminate as women are often less able to relocate than men because of their family commitments or a reliance of their partner’s income as the primary wage earner
- Work that requires unsocial hours or a requirement to work on-call or fulltime hours may work against women with childcare commitments

Employers who want to implement a policy that impacts negatively on women when compared to men must be able to justify that policy by producing evidence to show that it is a proportionate means of achieving a legitimate aim.

Harassment

There are three categories of potential harassment under the Act.

- 1** Subjecting an individual to unwanted conduct relating to their sex that has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them. Even if that individual is not the butt of the unwanted conduct, if they feel that their dignity has been violated or that an offensive environment has been created as a result, this can also amount to harassment under the legislation.
- 2** Engaging in unwanted verbal, non-verbal or physical conduct of a sexual nature that has the purpose or effect of violating someone's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment. It also includes sending emails of a sexual nature or posting porn. This is called sexual harassment.
- 3** The third type of harassment is when someone is treated unfairly because they refused to put up with sexual harassment. It can also cover unfair treatment even if they had previously accepted sexual conduct.

A single incident can constitute harassment if it is of sufficient seriousness.

Victimisation

It is unlawful for an employer to victimise an individual because they brought a discrimination claim, gave evidence in a discrimination case or made an allegation of discrimination (whether it has been upheld or not).

To succeed in a victimisation case, the person has to show that they were the target of negative treatment because they had pursued a discrimination case, had given evidence or had made allegations of discrimination.

Exceptions

There are three main circumstances when the Equality Act 2010 (or equivalent legislation in Northern Ireland) does not provide protection against sex discrimination:

- The genuine occupational qualification (GOQ)
- Positive action
- Employment for the purposes of religion

Genuine occupational qualification (GOQ)

Employers are allowed to discriminate under the Equality Act when a person's sex is a "genuine occupational qualification" for the job. For instance, it may well be permissible under the Act to employ a female physiotherapist under the GOQ exception to work in a women's health clinic.

However, a GOQ exception will not apply if an employer already has enough staff of the other sex who could take on duties of the job without too much inconvenience.

Positive action

Positive action means giving preferential treatment to an individual or group of people to address under-representation or disadvantage at work.

Examples of lawful positive action include targeted job adverts, extra training, mentoring or networking opportunities, building work support networks, offering bursaries and conducting outreach work such as visiting schools.

The Equality and Human Rights Commission suggests that employers make any positive action time-limited and keep it under review.

Positive action is not the same as positive discrimination, which involves treating people more favourably on grounds of sex and which (with a few narrow exceptions) is unlawful.

Employment for the purpose of a religion

Sex discrimination is also lawful in relation to employment for the purposes of an organised religion, where employment is limited to

one sex so as to comply with “the doctrines of the religion or to avoid offending the religious susceptibilities of a significant number of followers”

This exemption is limited effectively to employment by religious organisations such as churches or mosques.

Time limits

Occasionally, it may be necessary to take a claim to an Employment Tribunal (ET). Claims must be lodged with the ET no later than 3 months minus one day after the act of discrimination that is the source of complaint.

The first step in the tribunal process is to submit an Acas Early Conciliation (EC) form to Acas. This step is compulsory and must be taken before the claim deadline expires. Otherwise the claim is likely to be dismissed. There is more information about Acas EC on the Acas website at: www.acas.org.uk/early-conciliation The equivalent body in Northern Ireland is the Labour Relations Agency: www.lra.org.uk/early-conciliation.

Please speak to your Senior Negotiating Officer as soon as possible if you think you have an ET claim.

F. PUBLIC SECTOR EQUALITY DUTY

The Equality Act 2010 introduced a general duty on public authorities in carrying out their functions to promote equality of opportunity between men and women.

The duty means public bodies are required to have due regard to the need to:

- Eliminate unlawful discrimination and harassment; and
- Promote equality of opportunity between men and women

The requirements to pay due regard to the elimination of unlawful sex discrimination and harassment include discrimination and harassment in relation to transgender people.

The general duty is effective in England, Scotland and Wales. Northern Ireland has its own public sector equality duty, found in section 75 of the Northern Ireland Act 1998.

In England, Trusts must also comply with the following “specific duties”:

- to publish information at least annually, showing how it is meeting its public sector equality duty as to sex (this includes information about workforce pay and pay equality); and
- to publish one or more “specific and measurable” equality objective to advance the public sector equality duty, and to renew that objective(s) every four years.

The specific duties owed by Trusts in Wales and Scotland are much more tightly drawn than those for England.

The EHRC has produced guidance, The essential guide to the public sector Equality Duty, showing the kind of information that should be published to comply with this specific duty.

Gender pay gap reporting

From April 2018, compulsory gender pay gap (GPG) reporting has been in force (except in Northern Ireland) for all employers of 250 or more employees.

However, this new regime does not impact significantly on NHS Trusts, since as public bodies employing 150 or more employees, they were already required to publish annual information to show how they were complying with the public sex equality duty, including as to pay.

The new regime will impact on any large employers in the private and voluntary health and social care sector. The regime requires annual reporting of the mean and median pay gap between men and women, the number of men and women on the payroll, the percentage by gender being paid bonuses, and the bonus pay gap.

GPG reporting is policed by the Equality and Human Rights Commission (EHRC). There is more information about the reporting regime on the EHRC website.

Checklist for stewards

- Be clear on how you stand on sexist behaviour and discrimination. Be prepared to challenge sexist remarks, jokes or behaviour as part of your steward's role.
- Educate yourself about the issues so you are in a position to give at least some initial advice
- Educate members – organise speakers or a short training session for one of your meetings. Informal discussions can be a vital part of education and a short conversation with a member will be more effective than a long lecture!
- Distribute information and posters which advertise union and equality messages and events
- Challenge management – make sure there are equality policies and they have a firm commitment to putting them into practice
- Check all Trust policies to ensure that they do not discriminate on grounds of sex and if they need revising raise at the Joint Negotiating Committee
- Ensure there are anti-harassment, bullying and discrimination policies in place and they are widely publicized
- Ensure that your employer is fulfilling its legal requirements under the Public Sector equality duty, and that you make use of available monitoring statistics to advance your sex equality arguments, including equal pay, on behalf of your members
- Put pressure on management to organise training and diversity courses
- Take up cases on behalf of members. These may be difficult, but the CSP Employment Relations and Union Services (ERUS) Department Officers will support you. This may involve using specific procedures or a more general grievance procedure. Occasionally the case may go as far as an Employment Tribunal, in which case the CSP's solicitors will be involved

- If you think you may have an ET case, be aware of time limits and discuss with your SNO at the outset.

Checklist for managers

- Be clear on how you stand on sexist behaviour and discrimination. Be prepared to challenge sexist remarks, jokes or behaviour. It is a manager's responsibility to ensure that all staff are treated equally and are not subjected to discrimination or harassment
- Be prepared to act decisively when you encounter inappropriate behaviour. The NHS is committed to tackling all forms of discrimination and it is part of your job to carry this out at local level.
- If you are not sure of your exact responsibilities or need more information and training contact the appropriate department
- Ensure you are aware of your Trust's policies on procedures on harassment, bullying and discrimination
- Organise training, information sessions and discussions on the issues
- Encourage staff to participate in outside courses or events which may broaden their knowledge
- Examine the service you provide. Are you meeting all the needs of your client groups? A lot of information has been produced about providing services to diverse communities. It is important that this is available and used.

G. EXERCISES FOR WORKPLACE MEETINGS: SEX

The following case study is designed to help you initiate discussion at a staff meeting. The purpose is to raise awareness of the issues around sex discrimination, of members' rights and how you can support them

CASE STUDY: Judy, a Band 7 physiotherapist, is about to return from maternity leave in three months' time. She was working full time as a team leader in orthopaedics before going on maternity leave and wants to return to work in her old post three days a week. She has approached her manager who is reluctant to agree this. Judy has been told that if she wants to return to her old post with her managerial responsibilities she will have to return full time. If she wants to return part time then she will have to take an alternative vacant post as a senior clinician which may be Band 7 or may have to be Band 6 if no Band 7 vacancies are available when she is due to return.

Do you know what Judy's rights are?

