



Equality & Diversity
TOOLKIT

A practical guide for CSP stewards,
managers and members

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FOREWORD



I am pleased to introduce The CSP Equality and Diversity toolkit : A practical guide for stewards, managers and members is now available for CSP members to download and read.

As a trade union and professional body, we represent almost 60 000 physiotherapists and support workers. It is crucial that you, as members, have access to this educational and informative toolkit.

The publication outlines the value and impact the 2010 Equality Act has within the workplace. It includes an overview of The CSP equality strategy, information on our equality and diversity networks and how to get involved, CSP publications, NHS policies and a business case for why we need equality.

The guide also details the law and best practice in relation to the Equality Act. Providing a thorough overview of the act and how a steward can take an active role in areas such as an equality impact assessment. Following this, taking an in-depth look into each of the eight protected characteristics, where some excellent case studies have been provided.

As physiotherapists, support workers and CSP members, we strive to achieve excellence. It is my hope that you can take the learning and practical steps from this toolkit and use them effectively within your workplace. Together, we can accomplish greater equality for all.

With best wishes,

Alex Mackenzie,
Chair of CSP Council



PURPOSE OF THE TOOLKIT

We know from the many queries and cases that we deal with at CSP that equality and diversity issues can play a big part in the working lives of many CSP members. This affects members as individuals, or in your roles as stewards, safety reps, managers, clinicians, educators, as well as associates and students. At the same time, there can be confusion about what appear to be the constantly shifting sands of equality legislation, language and best practice.

That is why we decided to bring together information and guidance on equality legislation and best practice in a user-friendly and accessible format, so that you can look up the information you need on all the key issues.

We have made the toolkit as comprehensive as possible, but acknowledge that there are some areas not covered, such as social class. Some subjects, such as family friendly policies, are touched upon but are covered more fully in other CSP publications. In these cases, references or links are provided.

The Government has attempted to deal with the complexity of multiple laws by bringing them all together under one umbrella piece of legislation, the Equality Act 2010, which is explained in Section 2.

In Northern Ireland, equality law is still spread across separate sets of regulations. There are some important differences between equality laws in Northern Ireland and the rest of the UK. One important difference is that Northern Ireland has specific laws to protect people from workplace discrimination based on their political beliefs, enforced by a separate tribunal known as the Fair Employment Tribunal.

Sections 3-9 of the toolkit look at each of the main equality strands and at how discrimination may be experienced. Of course, it is always helpful to remember that equality cannot really be boxed neatly into single sections, as discrimination crosses all sorts of boundaries, and an individual can face multiple forms of discrimination.

Each section outlines what protection is provided by law and by employer policies and includes case studies designed for CSP managers and stewards to use at physiotherapy staff meetings to broaden members' understanding of the issues and to encourage discussion. Answers are provided at the back of the toolkit.

The document is aimed primarily at members working in the NHS because that is where the majority of our members work, but we hope this will also be of interest and value to our members in non- NHS sectors.

Equality never stands still, so we will be regularly updating the toolkit, as legislation, case law and best practice changes. Please let us know if you are aware of any omissions or errors, or if there is anything more you think we can do to take forward the agenda on equality, diversity, and inclusion.

ACKNOWLEDGEMENTS

ERUS would like to thank Saraka Keating, Senior Negotiating Officer and former CSP Equality Officer for originally writing, editing and coordinating this publication and to all those who assisted her.

Introduction



A. CSP EQUALITY AND DIVERSITY STRATEGY

CSP has an equality and diversity strategy agreed by Council, and reviewed regularly. The strategy links directly to the CSP Corporate Plan Objective to “embed diversity in all we do”.

The overall strategic aims of the Equality and Diversity Strategy are as follows:

- 1 To ensure as far as is reasonably possible, that CSP members from diverse backgrounds have equal access to participation and involvement in CSP services and structures and that information and services provided to CSP members are accessible to all.
- 2 To provide appropriate training and support to CSP staff to develop good understanding of diversity issues.
- 2 To support CSP members from diverse backgrounds in achieving equality of opportunity in employment.
- 2 To provide support and information for CSP members to assist them in ensuring that the physiotherapy services they provide offer equal accessibility to patients from all backgrounds.
- 2 To ensure that CSP is seen as an employer committed to equality and diversity in both the employment and training of staff so that they are equipped to provide the best possible service to all sections of CSP membership.

B. CSP DIVERSITY NETWORKS

CSP Equality and Diversity Networks

There are three recognised CSP networks for members – the DisAbility Network; the Black, Asian and Minority Ethnic Members (BAME) Network; and the Lesbian, Gay, Bisexual and Transgender + other sexual orientation Members (LGBT+). All are open to paid up CSP members, including students and assistants. The network groups meet at least twice a year, including holding joint sessions on issues of common interest. The CSP pays expenses for members to attend.

The **DisAbility Network** is for members with a disability or health condition, which may or may not affect their ability to carry out their role as a physiotherapist. The group recognises that not everyone identifies with the terms “disability” or “disabled” and so encourages any CSP member with a health condition, mental or physical, that impacts on their daily life, to consider joining the group for support and community. Therefore, the group encourages members with a wide variety of

conditions such as eczema, asthma, back problems, dyslexia etc to join the group, so that it is as inclusive as possible.

The **BAME Network** is for members who are black, Asian or from an ethnic minority background.

The **LGBT+ Network** is for lesbian, gay, bisexual, transgender, and members who identify with a range of different gender and sexual identities.

Membership of all three groups is **confidential**, with access to details restricted to those officers working directly with them. Through WhatsApp networks and the CSP interactive website (iCSP), members receive regular briefings on equality related issues, legal updates, news and information on relevant events. Both media provide means for network group members to discuss issues of common interest, share support, and celebrate each other's successes. Each network elects at least one **Convenor** and sometimes two.

A key activity for the networks has been to provide **peer support**. Members volunteer to be put in touch with other members who are experiencing difficulties in the workplace, for example coming out, harassment, and lack of support for physiotherapists with disabilities. All three networks submit motions to the CSP Annual Representative Conference (ARC) and members have attended the TUC equality conferences.

How to join the networks

You can join the CSP's diversity networks on the interactiveCSP (iCSP) website. If you have questions or need help to use iCSP, then please contact the CSP online communications team icsp@csp.org.uk or 020 7314 7870.

To join the CSP diversity networks on WhatsApp Caulfields@csp.org.uk

C. CSP PUBLICATIONS

CSP Employment Relations and Union Services (ERUS) produces regular information papers on a wide range of equality and diversity issues. These can be accessed by logging on the CSP website at www.csp.org.uk

D. NHS POLICIES

NHS Constitution

NHS staff have extensive legal rights which are embodied in general employment and discrimination law. These are summarised in the Handbook to the NHS Constitution. The rights are there to help ensure that staff are among other things: *“treated fairly, equally and free from discrimination”*.

In return, staff have a duty: *“not to discriminate against patients or staff and to adhere to equal opportunities and equality and human rights legislation”*.

NHS Terms and Conditions Handbook

Part 5 of the NHS Terms and Conditions Handbook is on Equal Opportunities and contains policies on:

- Recruitment, promotion and staff development
- Dignity at work
- Caring for children and adults
- Flexible working arrangements
- Balancing work and personal life
- Employment break schemes

It also contains the following general equality and diversity statement which was updated in May 2009.

“All parties to this agreement commit to building a NHS workforce which is valued and whose diversity reflects the communities it serves, enabling it to deliver the best possible healthcare service to those communities. The NHS will strive to be a leader in good employment practice able to attract and retain staff from diverse backgrounds and communities.

The parties will strive to ensure that:

- Everyone working in the NHS should be able to achieve his or her full potential in an environment characterized by dignity and mutual respect
- The past effects of institutional discrimination are identified and remedial action taken
- Equality of opportunity is guaranteed
- Individual difference and the unique contribution that individual experience, knowledge and skills can make is viewed positively
- Job descriptions, person specifications, and the terms and conditions of service fit the needs of the service and those who work in it, regardless of age, disability, race, nationality, ethnic or national origin, gender, religion, beliefs, sexual orientation, domestic circumstances, social and employment status, HIV status, gender reassignment, political affiliation or trade union membership.

E. BUSINESS CASE FOR EQUALITY

Good employers increasingly recognise the business benefits of a diverse workforce and good equality policies and practice in the workplace.

Not only does a positive approach towards diversity avoid potentially expensive legal action, it also promotes the organisation as a good employer and service provider among existing staff, potential job applicants, service users and other stakeholders.

Promoting diversity needs not be expensive or complex. The benefits include:

- higher morale and productivity, improved retention rates and lower recruitment costs;
- better understanding of customers' needs and greater insight to reach untapped markets;
- help in addressing skills shortages.

NHS Employers represents trusts in England on workforce issues. Similar organisations operate in Scotland, Wales and Northern Ireland. They help employers to ensure the NHS is a place where people want to work. NHS Employers has identified four key business benefits for employers in having a creative approach to diversity:

- A good reputation attracts talent from all communities, helping to meet service delivery needs
- Valuing diversity enables employers to recruit and retain the best people for the job
- Staff perform better in organisations that value diversity and are committed to employees' well being
- Effective diversity management limits the risk of legal challenges and costly awards.

Alongside serving an incredibly diverse population, the NHS has the added challenge of responding to changing demographics, such as a maturing UK population, and attitudes, such as the expectations of Generations Y and Z (those born 1980-1996 and 1996 onwards) whose life experiences, expectations and attitudes towards diversity, work and life styles are very different to previous generations.

The health emergency created by the Coronavirus-COVID 19 pandemic has created a new landscape of inequality and an urgent challenge for the NHS. There is mounting evidence that the threat of COVID 19 is not the same for everyone. Black, Asian and minority ethnic (BAME) communities, including NHS staff, are disproportionately affected.

Men and people who are older or disabled – especially anyone with a weakened immune system – are also at raised risk, as are pregnant women, especially those who are from BAME backgrounds, older or with pre-existing health conditions.

The law and best practice



A. EQUALITY ACT 2010

The Equality Act came into law in October 2010 to bring together and streamline all previous domestic equality legislation (over 116 pieces of legislation), including such groundbreaking Acts as The Equal Pay Act 1970, The Sex Discrimination Act 1975, The Race Relations Act 1976, and The Disability Discrimination Act 1995.

The Act provides a legal framework to protect the rights of individuals and advance equality of opportunity for all. The Equality Act applies to England, Scotland and Wales. In Northern Ireland, equality law is still spread across a range of separate regulations. They can be found at www.equalityni.org/Legislation.

Definitions

The Equality Act 2010 defines discrimination in terms of nine “protected characteristics”:

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

Key features and differences

Equal pay

The key change here from previous legislation is that hypothetical comparators are allowed where there is no colleague doing equal work. In such cases, claimants are no longer debarred from showing direct sex discrimination in pay arrangements. Public bodies with more than 150 employees (including the NHS) have to report on the gender pay gap.

Positive discrimination

The Equality Act allows employers to discriminate in recruitment and promotion in favour of members of an under-represented group in a tie-break situation: i.e. where “A is as qualified as B to be recruited or promoted” so long as the employer “does not have a policy of treating persons who share the protected characteristic more favourably in connection with recruitment or promotion than persons who do not

share it". Put more simply, this means that if, for example, a BAME job candidate scored equally well at an interview, the employer could decide on the basis of under-representation to give the job to the BAME candidate. However, this can only be used in rare and unusual situations where two candidates are exactly equal, rather than as a more general means of tackling under-representation.

B. PUBLIC SECTOR EQUALITY DUTY

The Equality Act created a single public sector equality duty, which came into force on 5 April 2011. It was developed to harmonise the previous race, disability and gender equality duties and to extend them across all the protected characteristics. The overarching purpose of the equality duty is to integrate consideration of equality and good relations into the day-to-day business of public authorities. Compliance with the general equality duty is a legal obligation. The equality duty consists of a general duty supported by specific duties imposed by specific legislation.

There are important differences between the public sector equality duty scheme in England, Scotland, Wales and Northern Ireland. In particular, the Scottish government has implemented a duty under the Equality Act 2010 to consider how to reduce poverty and inequality when making decisions. This is the "socio-economic duty", which in Scotland is called the Fairer Scotland duty. The Welsh government is also taking steps to implement this duty.

Another important difference is that the specific legal duties that are owed by public bodies in Scotland, Wales and Northern Ireland are more detailed and specific than those in force in England. There is more information about the specific legal duties owed in each country on the website of the Equality and Human Rights Commission.

Current duties

The application of the public sector equality duty is guided by codes of practice issued by the EHRC. The general duty is on public sector organizations and employers to have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

Having due regard will involve:

- Removing or minimising disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

In Northern Ireland, the groups whose needs must be considered include people with and without dependants and people with different religious and political opinions. The Northern Ireland public sector equality duty is found in section 75 of the Northern Ireland Act 1998.

The Northern Ireland Department of Health equality scheme is published on the DofH website: www.health-ni.gov.uk/doh-equality.

For further information and advice please visit:

www.equalityhumanrights.com and www.equalityni.org

Many NHS Trusts/Boards have in place a Single Equality Scheme (SES), embedding the different equality strands across the Trust. For further information see www.nhsemployers.org

C. EQUALITY IMPACT ASSESSMENTS

Equality Impact Assessments (EIAs) play a key role in the implementation of the duties.

In England (unlike in the rest of the United Kingdom) the formal requirement to conduct an Equality Impact Assessment was removed in 2011. Nevertheless, the Equality and Human Rights Commission (EHRC) says that in practice, there is still a requirement to conduct an EIA. This is because the general equality duty requires public authorities, such as Trusts, to have 'due regard' to the aims of the general equality duty when making decisions and setting policies. To do this, they need to understand the potential impact of their decision-making on different people, so as to identify practical steps to tackle any negative impacts or discrimination and to advance equality.

Assessing the impact on equality of their policies and practices is an important part of Trusts complying with their general equality duty. Assessing impact requires good equality information and analysis, at the right time, as part and parcel of decision-making.

If decisions are challenged, an EIA is also the best way of proving why decisions have been taken.

In Scotland, Wales and Northern Ireland, EIAs remain a formal legal requirement.

NHS Employers has provided detailed briefings to Trusts on how to carry out EIAs in England³. Assessments should be done when an organisation is planning to change or introduce new services. In addition to meeting legal obligations, the assessments help Trusts to deliver their objectives and achieve equitable outcomes for staff, the local community and service users. More importantly, in line with good practice, they help organisations identify and prevent potential disadvantage through a more proactive approach.

EIAs do not have to be onerous. The assessment process will depend on the size of the authority. However, EIAs all require good information and consultation with staff, service users and trade unions. Authorities need staff in relevant posts to have the skills to be able to analyse the implications for equality.

Preliminary and full assessments

A preliminary “screening” is useful to decide if a full impact assessment is needed. Authorities should look at the aims of the policy or practice (this should be straightforward) and at existing evidence of potential impact on equality. Even if there is little data, action may still be required.

The screening should consider whether:

- a. the policy is a major one in terms of scale or significance for the activities of the authority: or
- b. although the policy is minor in terms of scale and significance, it is likely to have a major impact upon equalities.

A policy which has an extremely adverse impact on a small number of people is more important than one with a minor impact on more people. People from marginalised groups should be involved in drawing up the criteria for screening.

If the policy falls into category a) or b), the authority should conduct a full impact assessment. This will involve:

- Analysing available data and research
- Consulting relevant groups
- Assessing the potential impact
- Considering measures which might mitigate any adverse impact and/or alternative policies
- Arriving at a decision on the way forward
- Publishing the results of the impact assessment
- Arranging for future monitoring of the actual impact of the policy

What is the role of CSP stewards in the equality impact assessment process?

The role of the CSP steward is not to play a full role in undertaking equality impact assessments. It is the employer's responsibility to ensure that they meet this duty.

CSP stewards do have a key role to play in ensuring that their organization is taking action to embed an effective equality impact assessment process into all areas, including both employment policies and practices and patient service delivery.

This is one area where staff sides can work together to raise the issue at joint negotiating meetings. In many NHS organisations, specialist teams of staff have been set up who carry out the majority of the work around equality impact assessments, liaising with other staff as appropriate.

In brief, the steward's role is to:

- 1 Ensure that employers are undertaking EIAs
- 2 Raise concerns if EIAs are not being done properly
- 3 Ensure EIAs are a standing item on the agenda at staff side committees and Joint Negotiating Committees

EIA key points

- EIAs help an organisation fulfil its legal obligations under legislation
- EIAs ensure that activities and services do not discriminate
- EIAs help promote equal opportunities
- Assessments are needed for new or existing services, strategies, policies, procedures and projects
- They help organisations to see if certain groups are, or could be, disadvantaged by a policy
- EIAs identify where changes to policies may be required to promote equality and eliminate inequality
- EIAs should be publicised and reviewed regularly

Checklist for CSP stewards

- 1** Do you understand how the equality impact assessment process operates in your organisation? Is there a specialist team of staff responsible for providing advice, guidance and carrying out the assessments?
- 2** Is there support for the process from the highest levels within the organisation and is this message being communicated effectively to all staff so that they understand the requirements and benefits the process offers?
- 3** Is there a clear system in place to prioritise which policies and practices need to be assessed and how soon this needs to be done?
- 4** Has your Trust joint negotiating committee discussed and agreed how the process will operate in terms of staff employment policies and practices? Are there plans in place to prioritise the order in which all such policies will be reviewed, along with a timetable for reviews?
- 5** Does this include recruitment, retention and staff development and training, along with the development of a diverse workforce?
- 6** Is comprehensive monitoring data on staff (including ethnic and religious background, sexual orientation, gender and age) collected and shared with the staff side? Such data is essential to undertake effective equality impact assessments.
- 7** Are there adequate processes in place to ensure that staff from minority groups, including BAME, LGBT+, part-time workers, staff with disabilities and carers, are consulted and involved as appropriate? Are sex and gender issues also considered, for example when looking at training, recruitment and promotion?
- 8** Are the results of equality impact assessments on staff employment policies and practices discussed at joint meetings so that a joint plan to address any problems identified can be developed and monitored?
- 9** Are appropriate staff being involved in assessments of new or existing patient service delivery policies and practices?
- 10** Are there plans in place to review consultation and involvement processes on service delivery to ensure that the public is engaged – particularly those relevant to minority groups?
- 11** Are the training needs of those staff who would benefit from equality impact assessment training being met? Does this include trade union representatives in relation to employment policy assessments?
- 12** Does your organisation have an overarching equality strategy that is subject to regular review to guide policy development and the ensuing equality impact assessments?
- 13** Does your organisation compile and publicise an annual report on the progress of the equality strategy and the outcomes of consultations, including impact assessments?
- 14** Are there sufficient time and facilities set aside to undertake them?

Disability



A. EXTENT OF DISCRIMINATION

In general, disabled people are disadvantaged in the workforce. Labour Force Survey (LFS) figures show that there are 6.8 million disabled people of working age in Britain, representing 1 in 5 of the working population.

- Only 51 % of disabled people of working age are in employment compared to 81 % of non-disabled people
- People with mental health problems have the lowest employment rate of all disabled people of working age, at only 21 %, and only 26 % of people with learning difficulties are employed
- Nearly 1 million disabled people who do not have a job want to work
- The average gross hourly pay of disabled workers is 10 % less than that of nondisabled people
- The employment rate for people with mental health problems rose from 15 % in 1998 to just 20 % in 2005, despite evidence that 60 % of people with mental health problems could work.
- Disability increases with age – one third of people from age 50 to retirement are disabled, compared with 10 % of people aged 16-24
- Many disabled people who do work find that they are confined to jobs for which they are over-qualified and have no hope of progressing
- 27 % of disabled workers say they have been insulted or had offensive remarks made about them, 25 % report they have experienced intimidating behaviour from people at work, and 12 % have suffered actual physical violence at work
- Of all children living in poverty, one in three has at least one disabled parent

B. ARGUING FOR EQUALITY

During the course of their work, physiotherapists encounter many disabled people: patients and colleagues. Many people consider disability to be an illness: a medical condition requiring a 'cure' by an 'expert'. This represents the medical model, a perspective that is often adopted by professionals whose preoccupation is with 'health' and 'normality'. Individuals are expected to aspire to 'normality' and, where this is not possible, are required to 'adjust' to their disability and to 'cope' within their environment.

For many disabled people, however, the reality is that disability is caused, not by an individual's impairment but by the numerous physical, social, environmental

and financial barriers encountered during the course of everyday life. This social model of disability draws upon the concepts of 'empowerment' and 'inclusion' and emphasizes society's responsibility in working towards the creation of a barrier-free world in which everyone, regardless of their impairment, can fully participate.

Physiotherapy is sometimes characterised as a highly restricted profession in terms of its scope of practice. It can be associated with the treatment of mainly musculo-skeletal injuries by healthy, young professionals whose chief preoccupation is with personal fitness and sporting activities. It is sometimes assumed that physiotherapists with any kind of significant physical impairment would find much of the work difficult if not impossible to carry out and therefore could not participate fully in the profession. Or to the contrary that a therapist with a non-physical impairment would have no difficulties in fully participating in the profession.

It is wrong to assume, however, that disabled therapists must do everything that non-disabled therapists do. There is in fact a broad range of practice that physiotherapists can choose to specialise in. Physiotherapy is a very flexible occupation encompassing many clinical specialities as well as management, education and research.

It is also important to remember that becoming disabled or developing a long-term health condition does not necessarily mean the end of a physiotherapy career. Not only do employers have a duty to provide reasonable adjustments under the Equality Act (or its Northern Ireland equivalent) but they are often also keen to retain the knowledge and experience that members of staff have. Please also note that if a disability is the result of a work injury an individual may qualify for ill-health retirement under the NHS Pension Scheme, or be entitled to a payment under the NHS Injury Allowance Scheme. Members in this situation should speak to their steward in the first instance and refer to CSP Information Paper 12 on Industrial Injuries.

C. ACCESS TO WORK

The Access to Work (AtW) scheme is a Government scheme administered through the Jobcentre Plus network. It was set up to provide financial assistance and practical help to overcome the barriers that disabled people face at work. It aims to improve the opportunities of disabled people in finding and keeping a job, and does this by funding some or all of the additional costs that employers may have when employing a disabled person.

There is a similar scheme in operation in Northern Ireland: Access to Work (NI): www.nidirect.gov.uk/articles/access-work-practical-help-work

Who can get assistance?

To get help from Access to Work you must:

- have a disability or health condition (physical or mental) that makes it hard for you to do parts of your job or get to and from work
- be 16 or over
- live in England, Scotland or Wales (or Northern Ireland to access the Northern Ireland scheme).

You need to have a paid job, or be about to start or return to one. A paid job could include:

- self-employment
- an apprenticeship
- a work trial or work experience
- an internship

Your disability or health condition may not have a big effect on what you do each day but may have a long-term effect on how effortful or how well you can do your job.

Is the assistance for the disabled person or the employer?

Both. The scheme helps employers to meet their obligations under the law by funding or part-funding the cost of adjustments that it would not be reasonable to expect the employer to pay.

The scheme is however targeted towards disabled people and should be designed to meet the needs of individuals. Jobcentre Plus views the disabled person, not the employer, as being the customer/client.

How do people apply for assistance?

The disabled member or the employer will need to contact Access to Work via the DWP's online portal (www.gov.uk/access-to-work/apply) or by phone (0800 169 0155).

In Northern Ireland, the Access to Work (NI) scheme is run by the Department for Communities: www.nidirect.gov.uk/articles/access-work-practical-help-work.

What kinds of equipment and services are available from Access to Work?

Examples include:

- Additional training for your team or personalised coaching to develop strategies
- Equipment that has been specifically designed for people with certain types of impairment, e.g. computer software, wheelchairs, seating, etc.
- Adaptations to premises and equipment
- Support workers

- Financial assistance with fares to work, for example if taxis are needed to travel to and from work because of a lack of accessible public transport
- Personal reader services for people who require assistance with accessing information – although this is more appropriately described as “support worker”
- Sign language interpreter services

Access to Work also offers mental health support, through two providers, Remploy and Able Futures.

Further information about the Access to Work scheme is available from www.gov.uk/access-to-work.

D. EQUALITY ACT 2010

This section provides a brief guide to

- 1 Who is covered by the Equality Act 2010 (and the equivalent regulations in Northern Ireland)
- 2 What the legal duties are for employers
- 3 What the legal duties are for trade unions

Introduction

Part 1 describes who would be defined as “disabled” according to the Act. Part 2 sets out the legal duties for those who employ disabled people. The Equality and Human Rights Commission produced a statutory Code of Practice, Code of Practice: Employment and Occupation, that explains the application of the law, and Employment Tribunals can refer to this. It is available at www.equalityhumanrights.com.

The TUC has also provided guidance in its publication Disability and Work: a trade union guide to the law and best practice. www.tuc.org.uk.

The Equality Act 2010 applies in England, Scotland and Wales. In Northern Ireland, equality law has not yet been brought together under one single Act. Instead, it is spread across several sets of regulations. Details are available from the website of the Northern Ireland Equality Commission at: <https://www.equalityni.org/Legislation>.

The laws that protect disabled workers in Northern Ireland are weaker in some important respects than the equivalent legislation in the rest of the UK. For example, you cannot claim for “discrimination arising from disability”, or “indirect disability discrimination” in Northern Ireland.

The definition of “disability” is also different. In Northern Ireland, an impairment will only be a disability if it affects one of a list of “day to day activities”. This list of

activities was removed in the rest of the UK by the Equality Act 2010.

These differences make it especially important that disabled members in Northern Ireland obtain early expert advice to ensure that they frame their complaint in the way that best supports their legal right to protection from disability discrimination at work.

The Equality Act 2010 says that you must not be discriminated against because:

- you have a disability
- someone thinks you have a disability (this is known as discrimination by perception)
- you are connected to someone with a disability (this is known as discrimination by association)

It is not unlawful discrimination to treat a disabled person more favourably than a non-disabled person.

Who is covered?

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 disability. 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 2010.

[N.B. All claims to an ET must be submitted no later than 3 months less one day from the date on which the alleged act of discrimination took place. The first (compulsory) step for any ET claim is to send an Acas Early Conciliation (EC) Notification Form to Acas. This step must be taken before the expiry of the claim deadline. Otherwise the claim is likely to be dismissed. There is 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.

- 1 Who is covered by the Equality Act 2010
- 2 What the legal duties are for employers
- 3 What the legal duties are for trade unions

Definition of disability

What is classed as a disability?

In the Equality Act a disability means “a physical or a mental condition which has a substantial and long-term impact on your ability to do normal day to day activities”.

HIV, cancer, multiple sclerosis are all automatically covered by the Equality Act,. You are protected as soon as you are diagnosed with one of these conditions. Blindness

and partial sight (unless it can be corrected by wearing spectacles or contact lenses) and severe disfigurement (except tattoos and body piercings) are also covered.

You are also covered by the Equality Act if you had a disability in the past. For example, if you had a mental health condition in the past which lasted for over 12 months, but you have now recovered, you are still protected from discrimination because of that disability.

An example of a mental impairment could be a mental health condition such as depression or a neurodevelopmental condition such as ADHD or dyslexia. However, an impairment does not have to be a diagnosed condition.

Substantial means:

- more than minor or trivial

Long-term means:

- has lasted 12 months,
- is likely to last 12 months from the outset,

Or

- will last for the rest of the person's life

Someone who has a progressive condition (such as diabetes or motor neurone disease) will be protected by the Equality Act as soon as there is any evidence that their condition impacts – even in a minor way - on their ability to carry out normal day-to-day activities, as long as that negative impact is likely to increase as the condition worsens.

The phrase “normal day-to-day activities” does not have a specific meaning. In England, Scotland and Wales (unlike in Northern Ireland) there is no longer a list of “normal day-to-day activities” that must be impeded in order for an impairment to be a disability under the Equality Act.

It is important to recognise that many people who are likely to have rights under the Equality Act may not wish to identify themselves using the term “disabled person”, and may be reluctant to disclose their disability to their employer or potential employer. This could be because they fear the consequences of using this label about themselves, which could be due to previous negative experiences of being on the receiving end of stereotypical responses.

Alternatively, they may simply not regard themselves as “disabled”. It is important that CSP stewards make their members aware that they have a right to protection under the Equality Act if their condition qualifies them under the definition, and that they are likely to lose this protection if their employer does not know about their disability.

Employers' duties Under the Equality Act

In relation to employment, employers have a duty not to discriminate against disabled people in the following areas:

- In the recruitment process
- In their terms and conditions of employment
- In chances for promotion, transfer, training and other benefits
- By not dismissing them unfairly
- By not treating them less favourably than other workers
- By not subjecting them to harassment or other detriment

There are six main types of discrimination:

- direct discrimination
- indirect discrimination
- failure to make reasonable adjustments
- discrimination arising from disability
- harassment
- victimisation

1. Direct discrimination

This is treating someone less favourably just because they have a disability. Direct discrimination cannot be justified in law.

EXAMPLE: An NHS Trust is selecting a candidate to appoint for the post as physiotherapy manager in a busy department. There are a number of candidates who have similar levels of qualification and experience, however one of these candidates has a history of depression, which they have declared. The employer decides not to employ that person because an assumption is made that it would be too stressful for them to take up a demanding role. This is likely to amount to direct discrimination because the employer is making the decision not to recruit based (solely) upon the person's disability. They are making assumptions about them that they would not make about a nondisabled person.

2. Indirect discrimination

This happens when a policy or way of working has a worse impact on disabled people than those who do not have a disability. This is unlawful unless the organisation is able to prove that there is a good reason for the policy and it is a proportionate measure to take to achieve that outcome – it is an objective justification.

EXAMPLE: a private physiotherapy practice states that all applicants must have a driving license. This puts some disabled people at a disadvantage as some disabilities exclude individuals from driving (e.g. epilepsy). If the advert is for a driving role, the requirement is proportionate, if it is for a clinical physiotherapy role it would not be.

It is not possible to claim for indirect disability discrimination in Northern Ireland.

3. Failure to make reasonable adjustments

Under the Equality Act, employers have a duty to make reasonable adjustments for disabled job applicants and for disabled employees to enable them to effectively execute their current role or progress through the organisation. An employer only has a duty to make reasonable adjustments if they know (or ought to know) that the person has a disability.

An employer cannot justify a failure to comply with the duty to make reasonable adjustments.

EXAMPLE: Following a service reorganisation, a physiotherapist who is unable to drive because of her disability applies for a job working in the community. Her application is not considered because she does not have a driving license, which is a prerequisite for the job. An employer cannot justify a failure to comply with the duty to make reasonable adjustments, for example to consider allowing the individual to use taxis, for which there may be funding available through Access to Work.

4. Discrimination arising from disability

The Equality Act protects people from discrimination arising from disability. This protects people from being treated badly because of something connected to their disability, such as having an assistance dog. For this type of discrimination to occur, the employer must know, or be reasonably expected to know, that the disabled person has a disability. The exception would be if the employer can demonstrate that there is a good reason for the difference in treatment and that it is a proportionate measure (objective justification, as above).

EXAMPLE: An employee develops a visual impairment and can no longer operate a computer without assistive technology. The employer makes an adjustment by providing a Braille keyboard, but the firm's computer system is not compatible with assistive software. The employee is dismissed because she cannot do as much work as a non-disabled colleague. If the employer sought to justify the dismissal, he would need to show that it was a proportionate means of achieving a legitimate aim, and that there were no other reasonable steps to take that could have avoided the dismissal.

Equality law does not protect employees in Northern Ireland from discrimination "arising from" disability. A member would normally have to base this kind of claim on the employer's duty to make reasonable adjustments.

5. Harassment

The Equality Act says that harassment of disabled people is unlawful. Harassment can happen when another person talks or behaves in a way that:

- Violates the disabled person's dignity, or
- Creates an intimidating, hostile, degrading, humiliating or offensive environment for them.

EXAMPLE: Colleagues often refer to a member of staff with dyslexia in a joking manner, as "dozy", "dizzy" and "slow". Regardless of whether the colleagues may or may not have intended any offence, the individual feels that these remarks erode his self-confidence and make him feel nervous about the work environment. The conduct of the disabled person's colleagues is likely to amount to harassment and employers would have a duty to take swift action to stop it happening.

6. Victimisation

This has a different meaning from that used in everyday language, and is not necessarily about bullying and harassment. It means in this context to treat someone less favourably because they have started or taken part in legal proceedings under the Equality Act or have alleged in good faith that someone could be in breach of the Act. Victimisation is unlawful under the terms of the Equality Act.

EXAMPLE: An employee takes their employer to an Employment Tribunal (ET) claiming disability discrimination because she believes she has been discriminated against. The disabled employee seeks the support of a colleague who knows about the case. The colleague attends the tribunal hearing and gives evidence in support of the disabled person's case, in good faith. After the hearing, the employer brands the colleague "a trouble-maker" and tries to undermine him because he gave evidence against the employer. This would be unlawful victimisation.

The Equality Act also protects against certain other situations.

For example, employers may not ask job applicants questions about their health or disability until they have been offered a job. There are some important exceptions to the ban. For example:

- An employer can ask about any reasonable adjustments that are needed to the application and interview process.
- An employer can ask questions about health conditions that are intrinsic to the role (after making reasonable adjustments), for example, the ability to see properly if you are applying for a job as an airline pilot.

This ban on asking job applicants pre-employment questions about their health or disability is not in place in Northern Ireland.

Trade union duties under the Equality Act

Trade unions have duties, too, under the Equality Act, both to the staff they employ and also to their members.

A union must ensure that it does not discriminate against disabled people

- In its decisions as to who may become a member
- In the terms of membership offered
- By refusing to accept, or deliberately not accepting, an application for membership from a disabled person
- In the way it provides any training, services or benefits to disabled union members

Unions are required to make reasonable adjustments for their disabled members – please refer to the stewards' checklist.

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 (compulsory) step is to submit an Acas Early Conciliation (EC) Notification Form to Acas. This step must be taken before the tribunal claim deadline expires or else the claim is likely to be dismissed. There is information about Acas EC on the Acas website. 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.

E. DISABILITY EQUALITY DUTY

In April 2011 the public sector equality duty came into force, replacing the previous race, disability, and gender equality duties. It requires all public authorities to meet both a “general” duty and a number of “specific” duties.

The duty means that public bodies must plan their practices and services so that they deliver equality for all disabled people. Under this approach, institutional discrimination can be challenged so that both present and future disabled workers or service users find that barriers have been removed before they encounter them.

The general duty requires public bodies (including NHS Trusts/Boards) or those carrying out work of a public nature to:

- Promote equality of opportunity between disabled persons and other persons
- Eliminate discrimination, harassment and victimisation and other conduct that is unlawful under the Act
- Promote good relations between people who have a disability and those who do not.
- Remove or minimise disadvantages suffered by people with disabilities due to their protected characteristics.
- Take steps to meet the needs of people with disabilities where these are different from the needs of other people.
- Encourage people with disabilities to participate in public life or in other activities where their participation is disproportionately low.

In England, the specific duties require public bodies to:

- publish information to show their compliance with the public sector equality duty in relation to disability at least annually; and
- set and publish equality objectives, at least every four years.

The specific duties that are imposed under the public sector equality duty are different in England, Scotland, Wales and Northern Ireland.

Further details are available on the EHRC website at: www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty

CSP stewards can help improve the experience for disabled people within their workplaces by promoting disability issues within their NHS Trusts/Boards and thereby helping to move their employers towards a genuine identification with the goal of disability equality.

Checklist for stewards

- Find out if your Trust has any Equality schemes in place for disabled members of staff, and that Equality Impact Assessments (EIAs) are being carried out on all policies and procedures
- Ensure that managers are aware of Access to Work, and that equality issues are on the agenda at all Joint Negotiating Committee meetings
- Check all Trust policies to ensure that they do not discriminate against disabled staff and if they need revising raise at the Joint Negotiating Committee
- Make sure that you are familiar with the requirement for unions to make reasonable adjustments for disabled members, e.g. meetings, dealing with personal cases
- Ask the individual member what their needs and preferences are
- Make adjustments to times and venues of meetings, case conferences or other meetings if necessary
- When dealing with personal cases, where possible allow extended appointment times if needed
- Make accessible information available well in advance
- Encourage the member to take breaks in meetings where required
- Enable advocates/friends to be present at meetings
- Ensure that meetings are either recorded or provide written minutes/ notes afterwards
- Produce documents/papers in different formats
- Be prepared to travel to the member in some cases if the journey is difficult or the person has issues with mobility
- If you think you may have an ET case, be aware of time limits and discuss with your SNO at the outset
- Make sure your members are aware of the CSP DisAbility network and how to join
- Discuss with your manager carrying out awareness raising exercises in this pack at staff meetings

Checklist for managers

- Do not assume that people with learning disabilities or mental health problems cannot be valuable employees, or that they can only do low status jobs
- Consult with each individual –they are the experts on their experience and on what they need
- Do not assume that because a disabled person may have less (paid) employment experience than a non-disabled person, they have less to offer
- Ensure that disability equality training is provided to staff, so that they understand their obligations under employer policy, legislation and the practice of reasonable adjustments
- Ensure that training opportunities are available for disabled staff
- Make use of the expertise and knowledge of relevant external organizations
- Monitor the implementation and effectiveness of your policy
- Inform all staff that conduct which breaches the policy will not be tolerated and respond quickly and effectively to any such breaches
- Be prepared to deal with acts of disability discrimination by employees under disciplinary rules and procedures
- Are you aware of Access to Work and how to access funding?
- Are you aware that staff with carer responsibilities for disabled people are also protected under the Equality Act 2010?
- Encourage disabled staff to join the CSP DisAbility Network and if possible allow study leave to attend the biannual meetings

F. EXERCISE FOR WORKPLACE MEETINGS

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

CASE STUDY: Stephen is a newly qualified physiotherapist who has just started his first Band 5 post at your trust. He is struggling to keep up with his workload of patients, particularly his notes. His manager has already spoken to him about this a few times and has warned him that unless he improves his performance she will be forced to take formal action.

Stephen has dyslexia but when he applied for this post he decided not to mention it because he thought it would count against him and given the high competition for newly qualified Band 5 posts he did not want to run this risk. When he was at university and on clinical placements he had lots of support and was able to perform well. However, in his new post he is finding it very difficult to see the same number of patients as his Band 5 colleagues mainly because of the time it takes to write up patient notes and carry out initial assessments. He does not know whether to tell his manager about his dyslexia or what support could be made available.

What impact could this situation have on other staff?

What support do you think could be made available for Stephen?

Race



A. EXTENT OF DISCRIMINATION

Black and minority ethnic (BAME) workers are disadvantaged at work and in wider society. The most recent census figures show that BAME people make up over 8% of the UK population, about 4.5 million people. It is estimated that BAME people accounted for half the growth in the working age population in the ten years to 2009.

- The rate of ethnic minority employment in 2009 was 12% lower than that for white people
- Black workers are twice as likely to be unemployed and one and half times as likely to be economically inactive as the overall working age population. Bangladeshi, Pakistani, black Caribbean and African workers are three times as likely to be unemployed as white British workers
- There is a greater concentration of ethnic minority groups into a smaller range of jobs. Black Caribbeans, black Africans, Pakistanis and Bangladeshis are the least likely to be in professional or managerial jobs
- Black Caribbean men earn over £100 less per week than their white counterparts
- Four fifths of Pakistani and Bangladeshi households have incomes at or below the national average compared with a quarter of white households
- Physiotherapists from BAME backgrounds account for approximately 7% of the CSP's membership

B. ARGUING FOR EQUALITY

It is the CSP's aim to provide services which meet the needs of all patients and in particular the traditionally most disadvantaged.

- People from the South Asian community are six times more likely to be affected by type 2 diabetes than those from the white population and at a much younger age
- Infant mortality in England and Wales for children born to mothers from Pakistan is double the average
- The prevalence of stroke among African Caribbean and South Asian men is 40 to 70% higher than for the general population
- Evidence from the Office for National Statistics has shown that Black and South Asian ethnic groups – including NHS staff - have a higher risk of testing positive with novel coronavirus (SARS-CoV-2) which causes Covid-19, as well as a higher risk of suffering a more severe disease from the virus.

The CSP encourages recruitment from black and minority ethnic communities. However there are a number of reasons why the profession still struggles to attract, retain, and promote BAME people:

“My father has never understood why I wanted to be a physiotherapist and not a doctor, which pays so much better”.

The NHS has also been seen to have problems with racism, which has led to a problem in not only recruiting staff but also retaining them:

“My mother was a nurse in the NHS for 25 years – she warned me not to go into the health professions. Her experience was very bad but she had no choice but to put up with it”.

Some of the views which people take for granted as being true prevent highly educated and competent members of various communities wanting to join the profession or continuing to work in the NHS.

Foreigners just won't fit in with the way we do things here

If we go back far enough, we can say that everyone who lives in Britain today has origins somewhere else. Many of us can probably trace the immigrants in our own family histories. People have come to this country for a variety of different reasons: some to make a better life for themselves, others forcibly, and some were invited to undertake the jobs that were difficult to fill due to a severe labour shortage. For whatever reason immigration has been a fact of life since the beginning of civilisation. Immigrants almost always make a tremendous effort to adapt to their adoptive countries, but also greatly enrich the indigenous culture with their differences.

There is no scope for further immigration to the UK

There are 66 million people in the UK. The birth rate in Britain is low and we are living longer. Working populations across the Western world are shrinking but pensioners and public services will need to be supported by fewer people working and paying taxes. In 1995 there were over four working people for every pensioner in the UK. By 2050 this will have fallen to less than three. Without immigration into the UK, the UN estimates the retirement age will have to go up to 72.

Immigrants are making a bad employment situation worse

Britain has always been a country where migrant workers have made a massive contribution to the economy. This has been the case in the past in hospitals,

transport, textiles, engineering, building, hotels and restaurants and will continue to be the case in the future. Without the workers that have come to the UK over the last 20 years, the UK economy would not have grown and many of our service industries and public services would not have been able to function. Migrant workers often work in low paying dangerous jobs and like everybody else work to improve their quality of life and provide for their families and communities. Employers and the labour market decide what jobs are available in the UK and how much they will pay. Migrant workers, like all workers, apply for the jobs that are available. Allowing ourselves to be divided into us and them only helps the employers and does not help workers.

Positive action means special treatment for minorities

Positive action is about redressing inequalities. For example, the CSP is actively encouraging people from diverse backgrounds to enter the physiotherapy profession so as to more accurately reflect the patients they treat and offer more appropriate services. This does not mean that the entry standards are lower, or that anyone is given preferential treatment.

C. TACKLING DISCRIMINATION IN THE NHS

There are still problems of discrimination within the NHS. In 2009, the Healthcare Commission (now Care Quality Commission) reported that compliance with the legal requirements of race equality legislation continued to be a problem for trusts, despite the fact that trusts should have been producing information since 2002.⁷

Only 44 % of trusts, for example, had published outcomes of race equality impact assessments.

The Healthcare Commission also reported the following sobering facts:

- Although 30 % of nurses and doctors are from minority ethnic groups, fewer than 10 % of senior managers and only 1 % of chief executives are from a similar background.
- In the Healthcare Commission's 2007 national staff survey, around 3 % of all staff said they had been discriminated against on the grounds of their ethnic background. This rose to 12 % from minority groups.⁸
- A survey of all NHS Trusts/Boards and PCTs in 2008 found that staff from minority ethnic groups made up around 16 % of the workforce, but were involved in more than twice as many bullying and harassment cases and capability

reviews than the wider workforce. In addition, nearly a third of grievances are taken out by staff from minority ethnic groups.⁹

- In a second survey of the South East Coast region of the NHS, staff from minority ethnic groups were found less likely to be appointed from a shortlist and more likely to be disciplined, be involved in a grievance, be involved in a bullying or harassment dispute, and pursue a case through an employment tribunal, than staff from the wider population.

CSP stewards and full-time officers frequently deal with complaints from BAME members about lack of promotion and career advancement, or unfair treatment in relation to capability reviews. The danger with such performance assessments is that they can very easily turn into assessments of the person, as opposed to their skills as a worker.

Under the Public Sector Equality Duty of the Equality Act 2010, public sector employers with over 150 staff have to monitor performance appraisals by reference to race. The results of this monitoring should reveal whether or not appraisals are operating in a discriminatory way. If the statistics show that ethnic minority staff are consistently scoring lower marks than white staff, the employer may be vulnerable to a claim of race discrimination. CSP stewards and full-time officers should remember to ask for this data when dealing with capability cases on behalf of BAME members.

The specific duties that are owed by public sector employers are different in England, Scotland, Wales and Northern Ireland. There is more information on the website of the Equality and Human Rights Commission: www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty.

D. EQUALITY ACT 2010

This section provides a brief guide to:

1. Who is covered by the Act and amendments
2. What the legal duties are for employers
3. What the legal duties are for trade unions

Introduction

The Equality Act 2010 makes it unlawful for an employer to discriminate on racial grounds. This includes:

- Colour
- Race
- Nationality (including citizenship)
- National origin
- Ethnic origin

Discrimination due to someone's caste is also covered.

The Act applies equally to England, Wales and Scotland.

Northern Ireland has very similar provisions, found in the Race Relations (Northern Ireland) Order 1997, available at: www.equalityni.org/Legislation.

Who is covered?

The Equality Act protects both applicants for jobs and employees. It also protects contract workers, temporary agency workers and many freelancers and 'self-employed' workers (that is, people who do work for an organization and its customers).

Anyone who is in business on their own account, freely selling their own goods and services at arms-length to their own clients and customers, is not protected.

Genuine volunteers are not protected.

All employees and workers are covered irrespective of their length of service or the number of hours they work each week. 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 race. 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.

Employers' duties under the Equality Act 2010

Discrimination can arise in relation to:

- the arrangements made for the purposes of determining who should be offered employment (such as advertisements and interviews)
- the terms upon which employment is offered
- refusing or deliberately omitting to offer employment
- the way in which access to opportunities for promotion, transfers, training or other benefits, facilities or services are offered
- dismissal or any other detriment

Racial discrimination can arise in any of four ways:

Direct discrimination

A person discriminates against someone by treating them less favourably than they treat (or would treat) another person. Where such discrimination is on racial grounds it is unlawful. This apparently straightforward issue creates difficulty for tribunals. Employers will almost always deny that the alleged discrimination had anything to do with race. In this situation the tribunal has to find the real reason for the employer's action.

EXAMPLE: A black employee is disciplined for being late for work several times. The tribunal has to look at the employer's treatment of that worker and compare that to how the employer treated (or would treat) a white person who had been similarly late for work.

Indirect discrimination

Indirect discrimination applies where the employer operates a provision, criterion, or practice which applies to everyone and which on the face of it is neutral in relation to race yet in practice works to the disadvantage of a racial group and cannot be demonstrated by the employer to be a proportionate means of achieving a legitimate aim.

EXAMPLE: An organisation advertises a vacancy that is only open to staff at a certain grade. If white people dominate that grade, a black employee could bring a claim of indirect discrimination because he or she was prevented by that requirement from applying. The evidence of disadvantage would be likely to be statistics showing the racial breakdown of the grade in question. As a defence, the employer would have to show that the requirement for that particular grade was objectively justified."

Harassment

Unlawful harassment occurs when someone is subjected to unwanted conduct that has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment, and the treatment is on the grounds of race, national or ethnic origin.

Conduct will only be regarded as harassment when all the circumstances are taken into account (including the perception of the person at the receiving end), and if it is reasonable to conclude that it could have had this effect. A single act may be enough to constitute unlawful harassment.

Victimisation

It is discriminatory to treat a worker less favourably because they have brought or supported a complaint of race discrimination, e.g. it may be unlawful victimisation if an employer does not promote someone because they previously complained of race discrimination, or if they supported someone else's complaint.

Trade union duties under the Equality Act 2010

Trade Unions have duties under the Equality Act (and the Northern Ireland equivalent laws), both to the staff it employs and to its members. CSP stewards have an important role to play on behalf of members in preventing unlawful racial discrimination or harassment in the workplace, and in promoting equality of opportunity and good relations between people from different racial groups. By participating in staff sides, stewards can help to negotiate changes in policies, procedures and practices, when needed, and to support measures that will prevent unlawful racial discrimination or harassment in the workplace, and promote equality

of opportunity. Stewards should take seriously their role to make members more aware of the importance of racial equality, and of the CSP's responsibilities under the Equality Act.

It is unlawful for a trade union to discriminate against members on racial grounds in the terms on which they offer membership or in the way they make benefits or facilities available. These may include training, welfare and insurance schemes, entertainment and social events, being involved in negotiations, or advice, representation and assistance in grievance, disciplinary or dismissal procedures. Trade unions must not harass members or potential members on racial grounds.

EXAMPLE: A black trade union member claimed at a tribunal that the branch secretary had discriminated against her by refusing to represent her in a formal grievance she had brought against two of her colleagues for bullying and racial harassment, having said that he was too busy. When she later found that he was representing the alleged harassers, also union members, she made a formal complaint to the union, which failed to investigate it properly and dismissed it. The tribunal unanimously decided that the union had discriminated against her in its provision of services, as well as by dismissing her complaint against one of its officials.

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.

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

E. PUBLIC SECTOR EQUALITY DUTY

Following the Stephen Lawrence Inquiry, the Race Relations Act was amended to introduce a general statutory duty on public authorities, including NHS Trusts/Boards, to promote race equality. This has now been incorporated into the public sector equality duty of the Equality Act 2010.

In April 2011 the public sector equality duty came into force, replacing the previous race, disability, and gender equality duties. It requires all public authorities to meet both a “general” duty and a number of “specific” duties.

The general duty requires public bodies (including NHS Trusts/Boards) or those carrying out work of a public nature to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

This involves taking action to:

- Remove or minimise disadvantages suffered by people due to their protected characteristics.
- Take steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encourage people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

In addition to the three general equality duties, public bodies have to carry out other specific duties to help them perform this general duty. In England, this involves:

- Assessing their functions and policies relevant to race equality
- Monitoring their policies in relation to their impact on race
- Assessing and consulting on the policies they propose to introduce
- Publishing the results
- Training their staff on their new duties

The range of specific duties varies depending on whether the public authority is based in England, Wales, Scotland or Northern Ireland.

As part of these duties, public bodies should publish a race equality scheme setting out how they will carry out both their specific and general duties.

In relation to staff, all public authorities must monitor, by ethnic group, their existing staff as well as applicants for jobs, and staff who apply for promotion or training. Employers must publish the results every year.

In addition, public authorities with at least 150 full time staff have to:

- Monitor and analyse by racial group, statistics for those staff who receive training, are involved in grievances or are the subject of disciplinary procedures, who benefit or suffer detriment from performance appraisals, and staff who leave
- Assess the data by reference to grades, management or profession
- Ensure that they take action as a consequence

The Equality and Human Rights Commission (EHRC) provides further guidance on their website: www.equalityhumanrights.com

Within the NHS, NHS commissioners and healthcare providers, including independent organisations, must implement the Workforce Race Equality Standard (WRES), through the NHS standard contract. There is more information about WRES here: www.england.nhs.uk/about/equality/equality-hub/equality-standard/.

Checklist for stewards

- Be clear on how you stand on racism and discrimination. Be prepared to challenge racist remarks, jokes or behaviour as part of your steward's role
- Provide a service for everyone and make this as accessible as possible
- Educate yourself about the issues so you are in a position to give at least some initial advice
- Make use of the expertise and knowledge of external BAME organizations
- 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, including information about the CSP BAME network
- 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 against BAME staff 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 the NHS Workforce Race Equality Standard, and that you make use of available monitoring statistics to advance your race equality arguments 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 may 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 racism and discrimination. Be prepared to challenge racist 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 racism 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 BAME communities. It is important that this is available and used
- Encourage BAME staff to join the CSP Network Group (see p8) and if possible allow study leave to attend the biannual meetings

F. EXERCISES FOR WORKPLACE MEETINGS:

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

CASE STUDY: Indira is a Band 6 physiotherapist who qualified as a physiotherapist in India and came to the UK to work in the NHS 15 years ago. She has worked at her trust as a Band 6 for the last 7 years. She has been applying for Band 7 vacancies in the same department for the last 2 years but has not been successful. She feels that she has not been encouraged to apply for these posts. She also always seems to be at the bottom of the queue for study leave. She feels that she is being discriminated against because of her ethnic origin and the fact that she qualified overseas.

What do you think Indira should do next?



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?

Transgender equality



A. AN INTRODUCTION TO THE ISSUES

Robust statistical data is not available for the UK trans population, according to the Government Equalities Office publication “Trans people in the UK” (2018). This paper tentatively estimates a number of approximately 200,000-500,000. Of these, almost 5,000 people have been issued a Gender Recognition Certificate since this became available.

The following section outlines the experiences of trans people, their rights and their choices.

Gender identity

Although we live in a relatively equal society where boys and girls have many interests in common, we still tend to think in stereotypes: conventional opinion leads many people to expect that each group will dress somewhat differently and may often have rather different behaviors and pastimes, and even separate groups of friends.

Society divides people into categories – boy or girl – depending on the male or female appearance of an infant at birth. Reproductive organs and physical differences define our sex, whereas gender identity describes the inner sense of knowing that we are men or women, and gender role describes how we behave in society. This is different from sexual orientation: that is whether a person is sexually attracted to men, or women, or both, or indeed neither. Typically, our sex appearance, gender identity and gender role are consistent with each other, so as soon as the sex of a baby is apparent at birth, it is assumed that the gender identity matches.

Gender dysphoria

Occasionally, a few individuals find that the way they look on the outside doesn't fit how they feel inside. Also, the way they are expected to behave may be quite different from the way they actually want to behave. This causes a feeling of discomfort that is sometimes described as gender dysphoria. Gender dysphoria is a recognised condition for which medical treatment is appropriate in some cases. Individuals experience gender variance to different degrees and react to social circumstances differently. So, people will express themselves in a wide variety of ways. Although “labels” don't really do justice to this variety, we have to use language to discuss these issues. Generally, the term used to embrace all varieties of unusual gender expression is transgenderism. Some trans individuals will cross-dress occasionally or on a regular basis (sometimes referred to as transvestism). Others may live permanently in the gender role that is most comfortable for them, but without seeking any medical treatment.

The distinctions between these gender expressions can sometimes seem quite blurred.

An increasing number of people do not identify comfortably as either men or women, but feel that they have characteristics of both and live somewhere in between; they often use the term “non-binary” and may prefer to be referred to as “they” rather than “she” or “he”.

Choices

For some, the discomfort arising from the mismatch between the way they look and the way they feel, may become extreme through childhood, adolescence and into adulthood. In adolescence, stress is aggravated by the onset of puberty, when the body develops even further in opposition to the innate gender identity. In the UK and many other countries, young people may have medical intervention to suspend puberty, allowing more time to confirm whether they wish to live as men or women in their adult lives. However, people experiencing gender dysphoria often live for many years in the gender role that society expects of them until finally their distress becomes intolerable and they undergo transition to live permanently according to the gender role that is more comfortable for them.

Possible treatments

Transgender people are legally entitled to treatment on the NHS but may also choose to be treated privately. Most of those have a combination of hormone medication and surgery to bring the body more closely in line with the underlying gender identity. This is called gender reassignment. Others may be able to achieve sufficient adaptation through hormone treatment alone. These treatments are generally very successful in giving people the sense of harmony and authenticity that they seek.

It is now quite common for those experiencing and/or expressing gender variance to describe themselves as transmen (female to male) and transwomen (male to female). However, many of those who live full time in the new gender role wish to be regarded as ordinary men and women.

Protecting privacy

It is important that trans people do not experience discrimination in the clinical setting. The Department of Health guidance stipulates that medical professionals should use names, titles and wherever possible hospital accommodation that the individuals concerned regard as appropriate.¹⁵ This will usually be consistent with their dress and presentation. If the situation is unclear, medical staff should discuss these issues with the individual, privately.

Confidentiality is an especially sensitive issue for trans individuals. No non-essential disclosure of their trans status or history should occur. Those who transition permanently may obtain a gender recognition certificate, which entitles them to special protection of their privacy under the Gender Recognition Act 2004.

The need for privacy applies whether the treatment is specifically for gender discomfort or for any other medical condition.

B. TRANS WORKPLACE ISSUES

The process of changing gender

The process of changing gender is slow and arduous, with significant consequences beyond the purely medical for the individual undergoing it. These facts may have significant consequences in the workplace, for which union representatives will need to be prepared. Such cases are increasingly common; the CSP has successfully supported members transitioning and cases will arise again.

Here is an outline of the stages that most transsexual people will have to go through before achieving their desired gender. However, the timings of the various stages vary significantly between individuals, and each situation will be unique.

Those undergoing treatment through the NHS will begin by receiving specialist medical advice and diagnosis. They will be expected to commit to the “real-life test” (see below) before hormones are prescribed. Those being treated privately may be prescribed hormones before committing full time to the real-life test. At whatever point they begin the real-life test, this is the most likely time when they will have to deal with issues around their gender role at work.

Next the individual begins to live as a member of the new gender, and may have records changed to reflect this (such as driving licence and passport). The period during which the person is living and working in their new gender is called the “real-life test”. One year is the minimum period for the real-life test recommended under international standards of care. However NHS patients are likely to be expected to have a minimum of two years and often more. Finally, for the individual intending, and able, to undergo surgery, after one or two years of hormone therapy, the person undergoes corrective surgery to complete physically the transition from the previous to the opposite gender. The timing of this varies according to local funding and waiting lists.

The process can be very stressful, requiring support and sympathetic handling from all concerned, and there is an obvious need to adopt the right approach in the workplace where the transition can have significant impact both upon the individual and upon colleagues.

Underlying principles

In any situation where a trans member approaches the union for support, the TUC advises that one principle needs to underlie the approach adopted by union representatives.¹⁶

At every point in the process, the steps to be taken must be agreed with the member, and the maximum confidentiality must be observed for as long as the member wishes that to be the approach. Each individual situation will be different, but requires the same respect for the wishes of the member if their transition to a new gender is to be brought about successfully in a workplace. Developing a plan with the individual covering some of the issues listed here will be a good approach, and must necessarily include taking these to management (while preserving confidentiality) to secure agreement with the proposed steps.

Some of the issues likely to arise at the point of transition are:

Remaining in post or redeployment?

In larger workplaces, the member may wish to transfer to another position at the point at which they adopt their new gender, and it is important to discuss how to manage this with management in order to achieve the best outcome. Early contact with an appropriate manager, or Human Resources department, will be necessary, and this may involve identifying a specific individual with whom to plan the transition process, in order to limit the number of people who know (should the individual want this approach).

Support during the transition; information and training of others

Whether or not the individual remains in the same post, a plan for support during the transition and after will need to address such questions as to what information and training will need to be provided for managers and colleagues. It will often happen that the person undergoing transition will wish to take leave before returning to work in their new gender. This will provide the opportunity to brief managers and colleagues and to ensure that management stress the need for respectful treatment of the worker.

Time off for treatment

Time off for transition is essential. The length of time will vary from individual to individual. Trans people will need to take time to attend a gender identity clinic at intervals up to and beyond surgery. It is important that as a minimum, the same policy is applied as for sickness absence, and if it is possible to obtain paid special leave for this period, that would make the stress of that time easier to manage.

The changeover

The plan will need to identify the point at which the individual's new gender is formally established in terms of the employer's records. The right of the individual to maintain the confidentiality of their previous identity needs to be secured as part of this stage.

It is good practice for an employer with a dress code to allow flexibility during transition, and to respect the individual's wishes as to when he or she is comfortable to change into the form of dress appropriate for their new gender. Agreement needs to be reached on use of toilets and changing facilities. Here, it will be appropriate to agree with managers that the individual starts to use the facilities for their new gender at the point where they begin to live in that gender. Other approaches, such as requiring the trans person to use the toilets for disabled workers, will not be

appropriate unless, of course, the individual is disabled. Clearly, at this particular point, it will be necessary to explain the situation to work colleagues as well.

Harassment and confidentiality

Trans people are extremely vulnerable to abuse and harassment so it is important that they are included in any harassment policy or statement. The employer and the trade union should be clear that harassment will not be tolerated.

Pensions

The Gender Recognition Certificate (GRC) brings full gender recognition for pensions and other state benefits, but it may be best to seek legal advice from the CSP on pension rights for a trans member, as it can be a tricky area.

Disclosure

As part of the overall approach of respecting the right of the individual trans worker to decide what they wish to be disclosed about their present or previous identities, unions need to negotiate with managers to ensure that no such disclosure is made without the express permission of the individual. This applies in particular to the provision of references if the individual decides to leave for another employment.

Peer support

The CSP LGBT+ Network Group meets twice a year and provides an opportunity for members to access information and training on issues that directly affect them such as legal developments and rights in the workplace, as well as an opportunity to share experiences, break down isolation and provide peer support. Members can also participate in social media and online discussions if they wish.

C. LEGISLATION

Equality Act 2010

The Act says that you must not be discriminated against because you are transsexual, when your gender identity is different from the gender assigned to you when you were born. For example, a person who was born female decides to spend the rest of his life as a man. Many people prefer to use the term transgender person or trans male or female.

To be protected from gender reassignment discrimination, you do not need to have undergone any specific treatment or surgery to change from your birth sex to your preferred gender, or to have sought or obtained a Gender Recognition Certificate.

You can be at any stage in the transition process – from proposing to reassign your gender, to undergoing a process to reassign your gender, or having completed it. You will be protected even if you start, but later decide not to progress, the process of gender reassignment.

Intersex people are not explicitly protected from discrimination by the Equality Act, but they must not be discriminated against because of their gender or perceived gender.

There is equivalent legislation in Northern Ireland – the Sex Discrimination (Gender Reassignment) Regulations (Northern Ireland) 1999.

There are four types of gender reassignment discrimination.

Direct discrimination

This happens when a transgender person is treated less favourably than another person or group in a similar situation because they are transgender.

EXAMPLE: You inform employer that you intend to spend the rest of your life living as a different gender. Your employer transfers you off your role against your wishes because they don't want you to have client contact

Indirect discrimination

This happens when an organisation's provision, criterion or practice puts transgender people a disadvantage compared with people who are not transgender.

Harassment

Harassment is when someone makes you feel humiliated, offended or degraded because you are transgender. For example, a trans woman is having a drink in a pub with friends, the landlord keeps calling her 'Sir' and 'he' when serving drinks, despite her asking him to stop.

An employer that fails to put in place effective policies to keep confidential a trans employee's pre-transition identity can find itself liable for transgender harassment and discrimination if this leads, for example, to bullying or harassment by co-workers. Where the trans employee holds a Gender Recognition Certificate (see below), disclosing this information can be a criminal offence.

Harassment can never be justified. However, if an organisation or employer can show it did everything it could to prevent people who work for it from behaving like that, you will not be able to make a claim for harassment against it, although you could make a claim against the harasser.

Victimisation

This is when you are treated badly because you have made a complaint of gender reassignment-related discrimination under the Equality Act. It can also occur if you are supporting someone who has made a complaint of gender reassignment related discrimination.

EXAMPLE: a transgender person is being harassed by a colleague at work, he makes a complaint about the way his colleague is treating him and as a result of complaining, the transgender person is sacked.

In some limited circumstances it will not be unlawful to discriminate on grounds of gender reassignment, as long as the different treatment can be justified as a proportionate means of achieving a legitimate aim. Examples might include when:

- A person's sex is a genuine occupational qualification for that job
- The job involves the holder conducting intimate searches
- The job involves the holder working in a private home and "reasonable objection" to them having the post can be shown.

The EHRC says that a case-by-case approach is often best when deciding what is legitimate and proportionate in terms of the exceptions to the general prohibition on discrimination against trans people.

Temporary exceptions may apply during the transition process where:

- Individuals have to share communal accommodation
- Personal care services are provided to vulnerable individuals

Even so, your employer has a responsibility to assess each situation carefully and act reasonably in the circumstances, e.g. considering alternatives such as reassigning duties.

None of these exceptions apply where a trans person is in possession of a Gender Recognition Certificate (see below).

Gender Recognition Act 2004

When it was introduced, the Gender Recognition Act enabled trans people to acquire full legal equality in their acquired gender. The GRA is currently (September 2019) the subject of a government consultation and the provisions may change in the future.

The GRA applies across the United Kingdom.

Anyone who obtains a Gender Recognition Certificate (GRC) is entitled to have documentation changed to reflect their new gender, including their birth certificate. A person acquiring a GRC may marry in their new gender or marry or form a civil partnership with someone of the same sex. Privacy rights were also introduced with the GRA. It is important to understand that anyone – including trade union representatives – who acquires information about someone's trans status may be liable to criminal proceedings if they pass that information onto a third party without the permission of the individual. This includes employers and union officials.

Checklist for managers

- Be clear on how you stand on trans-phobic behaviour and discrimination. Be prepared to challenge trans-phobic 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
- Gender identity and gender reassignment should be included in equality policies
- Ensure you are aware of your policies and procedures on harassment, bullying and discrimination
- Organise training, information sessions and discussions on the issues.
- Staff undergoing gender reassignment are entitled to sick leave from work for specialist medical appointments and surgery, and possibly paid special leave depending on local agreement
- When an individual has a new gender, all records should be changed and old records should be kept confidential or destroyed
- Remember it is illegal to disclose a trans person's previous gender status where they hold a Gender Recognition Certificate.
- If you are not sure of your exact responsibilities or need more information and training contact the appropriate department
- Encourage transgender staff to join the CSP LGBT+ network and if possible allow study leave to attend the biannual meetings

Checklist for stewards

- Be clear on how you stand on trans-phobic behaviour and discrimination. Be prepared to challenge trans-phobic 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
- If asked, point the member in the direction of relevant support groups and information sources
- Union records relating to the trans member should be changed where appropriate
- Remember it is illegal to disclose a trans person's previous gender status where they hold a Gender Recognition Certificate
- 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 against trans staff and if they need revising raise at the Joint Negotiating Committee
- Ensure that trans people are specifically included in anti-harassment, bullying and discrimination policies in place and they are widely publicized
- 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
- Make sure your members are aware of the CSP network for LGBT+ members and how to join

Glossary of useful transgender terms

Appropriate language is important in all areas of equality and diversity. Below is a brief guide to some key terms used when dealing with transgender issues.

Gender dysphoria: medical diagnosis of a consistent and overwhelming desire to live in the opposite gender to that assigned at birth.

Gender identity: the gender a person identifies with – not necessarily the one into which they were born.

Gender reassignment: the process of transitioning from the sex assigned at birth to the gender the person identifies with. This may involve medical or surgical procedures.

Gender Recognition Certificate: document that signifies full legal rights in acquired gender.

Legal sex: the Gender Recognition Act 2004 introduced a legal route for transgender people to apply to gain recognition of their change of gender for all legal purposes.

To come out/be out: to be open about your own sexuality or gender identity.

Transition: the term for the point of change of gender role for a trans person. The point inevitably leads to “coming out”.

Transphobia: prejudice against trans people.

Transgender person: a person who believes the sex which was assigned to them at birth is wrong and who lives (or wishes to live) permanently in their “new” gender.

CASE STUDY: Claire, one of your colleagues, is in charge of the hydrotherapy pool. A post-operative male to female transgender patient needs to have hydrotherapy treatment and is keen to attend the female only sessions that your trust runs. Hydrotherapy colleagues have expressed concern to Claire about the reaction of the other female patients. Claire has also heard it reported that one of the physiotherapy hydro staff has been voicing strong concerns in the staff room and has made inappropriate references to the patient, for example “I don’t know whether to call them he, she or it”, and “Should they be allowed to use the women’s toilet?”

What do you think Claire should do?



Sexual orientation



A. EXTENT OF DISCRIMINATION

Britain is a more tolerant and diverse place than a decade ago, but prejudice and discrimination still remain. While there has been real progress on the legal agenda, many lesbian, gay and bisexual (LGBT+) people still feel unable to reveal their sexual orientation at work.

CSP LGBT+ members have reported difficulties with both homophobic harassment in the workplace and pressure caused by the need to keep their sexual orientation hidden from patients.

Discrimination against LGBT+ workers includes not being appointed to jobs; unfair work allocation or over-supervision; and not being considered for promotion or training

B. ARGUING FOR EQUALITY

According to Office for National Statistics census data, in 2017, there were an estimated 1.1 million people aged 16 years and over identifying as LGB out of a UK population aged 16 years and over of 52.8 million. The same source suggests that the proportion of adults identifying as Lesbian, Gay or Bisexual is growing in the UK; over the last five years this has increased from 1.5% in 2012 to 2.0% in 2017.

We don't have any gay staff so this isn't an issue.

The NHS is the largest employer in the UK, employing approximately 1.3 million staff. Government actuaries conservatively estimate that 6% of the population is LGBT+. Therefore at least 78,000 LGBT+ people are likely to be working across the NHS so the likelihood is that most workplaces will have LGBT+ staff, whether they are open about their sexual orientation or not. Even in the unlikely case that there are no LGBT+ employees in your workplace, you will be dealing with LGBT+ patients, and staff will have friends and family who are LGBT+. As with other areas of discrimination, you do not have to be LGBT+ to be offended or made uncomfortable by homophobia in the workplace.

Lesbians and gay men should not be allowed to become physiotherapists – they cannot be trusted with patients, especially children.

This view rests on the baseless assumption that gay people (usually gay men) are paedophiles, or have less control over their emotions and sexual feelings. In fact, children are most likely to be abused by a relative or friend of the family. Everyone should have the right to pursue the career of their choice and preconceptions about lesbians and gay men should not be allowed to affect this.

Sexuality is a private matter and not relevant in the workplace.

Things are never that simple. Everyone has a sexual orientation, and for most people who are heterosexual, this is not hidden in the workplace. Heterosexual employees talk about their families, their holidays, and what they did at the weekend. CSP LGBT+ members report that this can be one of the most upsetting areas of discrimination they face. Often when they do try to join in discussions, colleagues “cold shoulder” them, perhaps from embarrassment if not outright prejudice. A same-sex relationship is perfectly normal if you are lesbian or gay and should be accepted as having equal value and emotions to a heterosexual one. It is important for physiotherapists to work together as a team and if someone feels excluded from that team, it cannot function as effectively as it should.

Gay rights are ok but sometimes they clash with other rights. We’ve had complaints from people on a ward about a gay man who is visited by his partner. Apparently when he leaves they kiss. That shows a lack of respect to other patients.

LGBT+ people have the right to express their relationships and partnership in the same way as heterosexual people. Simply because other patients object to same-sex relationships, LGBT+ people should not have to modify their behaviour when it is within the conduct expected of all other patients and staff.¹⁹

Why should my CSP subscription be used to fund activities for LGBT+ activities? It’s got nothing to do with most members and nothing to do with physiotherapy.

One of the main benefits and basic principles of a trade union is that by forming such a body the many can help to protect the interests and rights of minority groups within its membership. This principle also applies to the CSP as a professional and educational body. During the last decade, trade unions including the CSP have played an important part in the successful campaigns to achieve almost full legal equality for LGBT+ people. But legal equality is not sufficient, and LGBT+ members continue to face discrimination and harassment in the workplace. The LGBT+ Network Group meets twice a year and provides an opportunity for members to access information and training on issues that directly affect them such as legal developments and rights in the workplace, as well as an opportunity to share experiences, break down isolation and provide peer support.

C. COMING OUT AT WORK

Coming out is usually one of the biggest challenges facing LGBT+ workers. It is also a challenge facing by transgender people in the workplace. (See also Section 6). Coming out means to be open about your own sexuality or gender identity, and in the face of prejudiced or even hostile attitudes it can sometimes seem easier, especially for new or younger employees, to “stay in the closet” or keep their sexual orientation a secret. However, having to conceal who they really are has an impact on their ability to function well at work, to participate fully within the team, and ultimately will affect their health and well being. CSP stewards and managers have a particular responsibility to ensure that LGBT+ staff are supported in the workplace and that equality and anti-harassment policies are fully upheld.

The following are excerpts from a survey of CSP’s LGBT+ members. Some members reported very positive experiences of being out at work:

Over the last 12 years I have never experienced any discrimination or harassment from the staff. Everyone has been very supportive of my partner and me. When we had our commitment ceremony everyone celebrated with us, when she was ill everyone was concerned. I have never been treated differently in terms of special circumstances, leave etc in these situations and the Trust has always prohibited discrimination on grounds of sexual orientation in their policies. I have had a very clear career path and never once felt that being out at work would damage my career or chances of promotion.

One member wrote that she had had a largely positive experience of being out to her colleagues, but stressed the importance of not being out with her patients.

“I am out at work with physiotherapy colleagues. I have been since I qualified... My progression through the physio ranks has never been slowed by my decision to come out. There are quite a few of us now across our large Trust and we integrate fine with our hetero colleagues both professionally and socially.....The situation however is different with patients. I am an outpatient physio. I think in my career to date I have come out to only one patient and that was a leftie man I knew very well. I would be annoyed if one of my colleagues outed me to my patients. The therapeutic relationship is a careful balance, and I have heard enough prejudice in my community to make me wary, and some of my patients have said things to confirm that prejudice exists. I also don’t think there is any reason why patients should know, as I am not going to be sharing my social life with them. The purpose of our physio appointments is for me to help them alleviate/manage their condition”.

Although this was the experience of some members, others have felt able to be open at times with some patients, judging it on a case-by-case basis. A lot will depend on the overall culture at the workplace.

One member reported that she was not out at work at all. Her situation perhaps highlights the fact that it can be more difficult in smaller workplaces, and for the newly out LGBT+ person.

“I am not out at work. I haven’t been out that long anyway, so my confidence isn’t that high. Also, I work in an all female, very heterosexual department and there are some strong characters. Break-time talk is often about boyfriends and babies....In general conversation, I have heard no bad things/discrimination about gay people, but I don’t want to be the subject of gossip... The Trust does have a comprehensive anti-discrimination policy, but despite this I’m not sure that I would feel comfortable/ confident putting in a complaint if I needed to”.

When individuals come out at work, it can have quite an impact on combating negative attitudes and bringing about change. It is much easier for homophobia to thrive where the perception is that either there are no LGBT+ people around, or they are too fearful to be open about their sexuality.

“I’m out at work and have not received any negative attitudes or comments. One of our most senior managers (physio) is also out though, which I think really helps both raise awareness of diversity, provides a role model and prevents any negativity. I have naturally heard some homophobic comments at work, but once those involved realise I’m out they have soon stopped”.

D. THE EQUALITY ACT 2010

Sexual orientation discrimination is outlawed by the Equality Act 2010. The Equality Act applies to England, Scotland and Wales. In Northern Ireland, equality law is still spread across a range of separate regulations covering the different protected characteristics, including sexual orientation. The regulations are published by the Northern Ireland Equality Commission at www.equalityni.org/Legislation.

The Equality Act 2010 (and the equivalent law in Northern Ireland) says you must not be discriminated against because:

- you are heterosexual, gay, lesbian or bisexual
- someone thinks you have a particular sexual orientation (known as discrimination by perception)
- you are connected to someone who has a particular sexual orientation (this is known as discrimination by association)

In the Equality Act, sexual orientation includes how you choose to express your sexual orientation, such as through your appearance or the places you visit.

The Equality Act covers recruitment, terms and conditions, promotions, transfers, dismissals and training. It also covers discrimination on grounds of sexual orientation in the provision of goods, facilities and services in both the public and private sectors.

There are four main types of discrimination:

Direct discrimination

An employer cannot, on the grounds of sexual orientation:

- Refuse to employ someone
- Dismiss someone
- Refuse access to training or promotion
- Deny to lesbian, gay or bisexual workers benefits, services or facilities that are offered to heterosexual workers

EXAMPLE: While being interviewed for a physio post, a job applicant says she has a woman partner. Although she has all the skills and competences required, the organisation decides not to offer her the job because she is a lesbian. This is direct discrimination.

EXAMPLE: Direct discrimination also includes discrimination on the grounds of perceived sexual orientation – whether the perception is correct or not. So if the applicant in the above example had not referred to her partner but was assumed to be a lesbian for other reasons, and as a result was not offered the job, this would still be direct discrimination.

Indirect discrimination

An employer cannot set a particular policy or way of working that applies to everyone but which puts people of particular sexual orientation at a disadvantage. As with other protected characteristics, indirect discrimination can be allowed in certain limited situations if the employer can demonstrate a good reason – objective justification – for the policy.

Harassment

An employer must protect workers from bullying or harassment because of sexual orientation. This includes behaviour that is intimidating, hostile, degrading, humiliating or offensive. Organisations may be held responsible for their staff if harassment takes place somewhere that is associated with work, like a staff social gathering. Employers should also protect their staff from harassment by third parties such as service users and customers.

EXAMPLE: A gay man who was repeatedly referred to as “gay boy” by his manager had his claim for unfair and constructive dismissal upheld. The tribunal commented that “it is hard to envisage conduct more likely to shatter the trust and confidence of an employee in his employer” and the employer had “signally failed in its duty to an employee who has been bullied and harassed, contrary to their own

express policies”. The employer and the harasser were both found by the tribunal to have breached the Equality Act.

Victimisation

An employer cannot victimise someone because they have made a complaint of discrimination or supported someone else’s complaint.

EXAMPLE: A worker gives evidence for a colleague who has brought an employment tribunal claim against the organisation of discrimination on grounds of sexual orientation. When the worker applies for promotion her application is rejected – even though she has all the necessary skills and experience. Her manager maintains she is a troublemaker because she has given evidence at the tribunal and therefore should not be promoted. This would be victimisation.

Positive action

The Act makes it legal for employers and trade associations (including trade unions) to take proportionate steps to offer people with a protected characteristic particular support if this will help address disadvantage or if they are under-represented at work. Examples might include mentoring or networking opportunities, or help building work support networks. For example, it would be legal for the CSP to provide training specifically for LGBT+ members to take part in a union activity.

Genuine Occupational Requirement

An employer must be able to show that there is a “genuine occupational requirement” for discrimination against certain groups. For example, an organisation advising on and promoting lesbian and gay rights may be able to show that it is essential to its credibility that its chief executive – who will be the public face of the organisation – is lesbian or gay. The sexual orientation of the holder of the post may therefore be a genuine occupational requirement.

Time limits

In some circumstances, 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.

Checklist for stewards

- Be clear on how you stand on homophobic behaviour and discrimination. Be prepared to challenge homophobic 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, including information about the CSP LGBT+ network
- 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 against LGBT+ staff 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
- 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
- Make sure your members are aware of the CSP network for LGBT+ members and how to join

Checklist for managers

- Be clear on how you stand on homophobic behaviour and discrimination. Be prepared to challenge and/or report homophobic 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
- 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
- Where there is discretion over terms and conditions such as carers' leave are you applying a fair and equal standard to employees in same sex relationships?
- Encourage LBG staff to join the CSP LGBT+ network (see p8) and if possible allow study leave to attend the biannual meetings

E. CASE STUDY FOR WORKPLACE MEETINGS: SEXUAL ORIENTATION

The following is designed to help you initiate discussion at a staff meeting.

CASE STUDY: Michelle, a physiotherapy colleague, who recently started work at your trust and with whom you are friendly, asks to speak to you in confidence. She tells you that she is gay but you are the only person in the department who knows, as she does not feel comfortable coming out at work yet. This is mainly because another colleague has been making homophobic jokes and remarks in the staff room when referring to articles in the newspaper. You have also overheard the same person making a number of disparaging remarks about a patient who is believed to be gay, referring to him in abusive language and making jokes about his partner who sometimes accompanies him. This is never done within the earshot of the patient. Other colleagues in the department have not made any comments about

this colleague's behaviour but tend to smile and raise no objections. Michelle asks your advice on what to do but does not want to take any action that might out her at this time.

What do you think is the best thing to do?

Marriage and civil partnership discrimination



Civil partnerships between same-sex and opposite-sex (also termed mixed-sex) couples are now lawful throughout the United Kingdom.

Same-sex marriage is also lawful throughout the UK. (The bar on same-sex marriage in Northern Ireland was removed in February 2020.)

Discrimination because someone is in a marriage or civil partnership is unlawful.

Marriage and civil partnership discrimination is when you are treated differently at work because you are married or in a civil partnership.

Under the Equality Act, marriage and civil partnership means being legally married or in a civil partnership. People do not have this characteristic if they are single, divorced, engaged, or co-habiting.

There are three types of marriage and civil partnership discrimination.

Direct discrimination

This happens when you are treated worse than other workers in your workplace because you are married or in a civil partnership.

EXAMPLE: a woman works night shifts in a distribution warehouse but is dismissed when she gets married because her employer thinks a married woman should be at home in the evening

Indirect discrimination

Indirect discrimination happens when an employer has a policy or way of working that puts people who are married or in a civil partnership at a disadvantage. Such a policy is only permitted if the employer is able to show that there is a good reason for it and if the implementation of the policy is appropriate and necessary.

Victimisation

This is when you are treated badly because you have made a complaint of marriage or civil partnership-related discrimination. It can also occur if you are supporting someone who has made a complaint of marriage or civil partnership related discrimination.

Harassment is NOT a provision that applies to marriage/civil partnership status. However, if you are subjected to hostile, intimidating, humiliating, degrading or offensive treatment because you are married or a civil partner you may be able to bring a claim for direct discrimination, if you can show that you have been treated worse than others who are not married or in a civil partnership. Alternatively, you may be able to bring a claim for sexual orientation harassment.

Exceptions and exemptions

In some specific situations an employer can refuse to employ you because you are married or in a civil partnership if the work is for the purposes of an organised religion, for example as a Catholic priest (who are required to be celibate).

Religion and belief



A. EXTENT OF DISCRIMINATION

Two fifths of the population describe themselves as having no religion. Of the remainder, just over half are Christians (of which 27% are C of E and 9% Catholic), 3% Muslim, 1.2% Hindu, 0.8% Jewish, 0.8% Sikh and 0.3% Buddhist. A survey about discrimination in employment found the following:

- 1% of white respondents said their religion was the reason for being refused a job
- 2% thought it was the reason for unfair treatment at work
- 10% of Asian respondents said their religion was a reason for them being refused a job
- 16% of Asian respondents thought it was a reason for unfair treatment at work

B. ARGUING FOR EQUALITY

The Equality Act 2010 means that employers have to allow staff to promote their religious views freely in the workplace – it could end up being a real free for all

It's good practice when trying to create an inclusive workplace to accommodate the particular needs of people from faith communities, for example in the company's catering services, uniform design and dress codes, or in setting aside facilities for religious observance. However, trying to convert colleagues in the workplace could cause offence to others. If harassment has been explained to staff, they should be able to distinguish between reasonable discussion and offensive behaviour. Staff should be aware that if their discussions cause offence then this may be considered to be harassment and therefore unlawful. Similarly, employers who follow a particular religion must take care not to discriminate against those who are not of that particular faith.

Muslims are going to get special treatment and get given a prayer room, while the rest of the staff will get nothing

The Equality Act does not require employers to provide a prayer room. However, if employees request access to a quiet place in which to meet their religious obligations and such a place is available without it having any adverse impact on the business or other staff, then an employer may be acting in a discriminatory way if they refuse such a request. However, they have the same obligation to respond to requests from any religious groups, so in the case of multiple requests, staff from different groups would be required to share the quiet room.

The ACAS guidance to employers also stipulates that other staff should not be disadvantaged, for example if there is only one room available for use as a staff rest room, this room should not be converted for use as the quiet room/prayer room.

Religious people will get preferential treatment regarding time off for prayer and religious festivals

Organisations do not have to release staff for prayer outside normal rest breaks or holiday periods. Staff may request that their rest break coincide with their religious obligations to pray at certain times of the day. Employers may be justified in refusing such a request if, for example, it conflicts with legitimate business needs which they are unable to meet in any other way. Similarly, staff may request annual leave to coincide with religious festivals. Refusal to grant such leave may be discriminatory if it cannot be justified by a legitimate business need that cannot be met by any other reasonable means.

These new rights around religion will mean that some religious staff will refuse to work with gay and lesbian colleagues

Some religions do have strong views concerning sexual orientation but most do not advocate persecution of people because of their sexual orientation. Everyone has the right to be treated with dignity and respect in the workplace whatever their sex, race, colour, disability, age, religion, civil partnership or marriage status, or sexual orientation. Your employer's Equality Policy should incorporate this principle, and your employer must ensure that all staff treat each other professionally.

C. ISSUES IN THE WORKPLACE

Dress codes

There are no rules about dress codes. However a dress code which impacted on a particular religious group might well amount to indirect discrimination requiring justification if it is to be lawful. Within the NHS, specific clothing is required for health or safety or hygiene reasons, for example in the case of theatre staff. That might justify asking a Christian employee who wears a cross to remove it.

Employers need to be aware of the risks of discrimination. When devising or reviewing a dress code, they should consider whether the dress code will require employees to dress in a way that contravenes their religion or belief. Codes may directly or indirectly restrict:

- The length of beards
- The wearing of headscarves
- The wearing of burkahs, hijabs and veils
- The wearing of jewellery or a piercing.

NHS Employers guidance stipulates that if the rule is likely to conflict with an

employee's religion or belief then there must be clear evidence to demonstrate objective justification. This analysis may be required on a case-by-case basis.

Respecting religious observance

ACAS has produced useful guidance on the Equality Act setting out helpful advice on matters such as dress codes, dietary requirements, provision of space for prayers, and time off for religious holidays.

Monitoring

Employers are not required under the Equality Act to gather information about the religion or beliefs of their staff. However, if they want to improve the facilities offered to staff and ensure that their work practices are not indirectly discriminatory, they may need to have a better understanding of the needs of their staff and that may require asking staff about their religious and other beliefs.

Equally there is no obligation on staff to provide information about their religion and beliefs to their employer. However, if employers explain why they want the information and how it will be used, staff might be inclined to provide it. To avoid contravening data protection laws and to maintain employee confidentiality, any survey should be anonymous.

Special rules apply in Northern Ireland. Here, all employers of more than ten employees must register with the Northern Ireland Equality Commission, provide a monitoring return each year and conduct a review every three years. The aim is to ensure that members of the Protestant and the Roman Catholic community are enjoying fair participation in employment.

D. EQUALITY ACT 2010

The Equality Act 2010 made it unlawful to discriminate against someone because of religion or belief, or because of a lack of religion or belief.

The Equality Act 2010 does not apply in Northern Ireland, where equality laws are still spread across different regulations, covering each of the protected characteristics. The individual regulations are available at www.equalityni.org/ **Legislation**.

Northern Ireland also has additional specific laws to protect people from workplace discrimination based on their political beliefs, enforced by the Fair Employment Tribunal. Northern Ireland employers are also required to monitor the composition of their workforce to ensure that members of the Roman Catholic and Protestant community are getting fair access to employment and to report periodically to the

Northern Ireland Equality Commission on the results of the monitoring. There is more information about this on the Commission's website.

As regards the rest of the UK, although the Equality Act does not specifically mention discrimination because of political opinions, the term "philosophical belief" is probably wide enough to cover some political opinions.

The Equality Act applies to all aspects of employment and the provision of goods, services and education. It applies to all employers and service providers. In respect to 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 religion or belief. 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 Act.

Who and what is covered?

According to the EHRC's report "Religion and belief: a guide to the law" the Equality Act says that 'religion means any religion', but doesn't include a definition of religion. The courts have interpreted this as including any religion of sufficient seriousness which has a clear structure and belief system, such as Christianity, Judaism, Islam and Hinduism, as well as others such as Rastafarianism. A religion need not be mainstream or well known to be protected under the Act. The Equality Act also includes 'a lack of religion' and so atheists, humanists and secularists, are protected under the Act.

The Equality Act does not include a definition of belief other than 'belief means any religious or philosophical belief' and includes a lack of a particular belief. A belief must affect how a person lives their life or perceives the world. For a philosophical belief to be protected under the Act it must:

- be genuinely held
- be a belief and not just an opinion or viewpoint based on the present state of information available
- be about a weighty and substantial aspect of human life and behaviour
- attain a certain level of cogency, seriousness, cohesion and importance, and
- be worthy of respect in a democratic society, not incompatible with human dignity and not in conflict with fundamental rights of others. For example,

Holocaust denial is not protected.

Examples of philosophical beliefs that have been given protection by the Equality Act include ethical veganism and a belief in man-made climate change.

There are four main types of discrimination:

Direct discrimination

Direct discrimination means treating people less favourably than others on the grounds of religion or belief (or instructing someone else to behave in this way).

There is no defence available to an employer to a claim of direct discrimination. There are however exemptions in relation to genuine occupational requirements (see later).

EXAMPLE: At interview it becomes apparent that a job applicant is Hindu. Although the applicant has all the skills and competences required of the job, the organisation decides not to offer him the job because he is a Hindu. This is direct discrimination.

Indirect discrimination

Indirect discrimination means applying a provision, criterion or practice (whether intentionally or not) which disadvantages people of a particular religion or belief, unless it can be justified. To be able to justify it, employers have to show there is a real business need for the practice.

EXAMPLE: Disliking the baseball caps his delivery drivers like to wear, a Chief Executive applies a “no headwear” policy to all his staff. The policy, although applied to all employees, disadvantages his Sikh staff who wear turbans for religious reasons. This policy is indirect discrimination.

Harassment

Harassment is defined as subjecting someone to unwanted conduct that violates their dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. The harassment does not have to be intentional – for instance it can be jokes or banter that someone finds offensive. It may be about the individual’s religion or belief or it may be about the religion or belief of those with whom the individual associates. It may not be targeted at an individual(s) but consist of a general culture which, for instance, appears to tolerate the telling of religious jokes.

EXAMPLE: Mr “A” is continually teased at work about his partner’s religious convictions. He finds being subjected to such teasing offensive and distressing and complains to his manager. His manager tells him not to be silly, that the teasing is only harmless workplace banter and is nothing to do with the organisation. This is harassment on the grounds of religion or belief even though it is not the victim’s own religion or belief that is the subject of the teasing. Mr “A” is able to complain through an Employment Tribunal. His colleagues may have to pay compensation. The organisation may have to pay compensation because it has liability for the actions of its staff when at work, or when out of work hours but doing work-related activities (such as an office party).

Victimisation

Victimisation means treating people less favourably because they made or intend to make an allegation about discrimination on the grounds of religion or belief, or because they have given or intend to give evidence under the Equality Act. It does not matter if the allegations turn out not to be true, providing they were made in good faith.

EXAMPLE: After giving evidence for a colleague who had brought an ET claim against the organisation on the grounds of religion or belief, a worker applies for

promotion. Her application is rejected even though she shows that she has all the necessary skills and experience. Her manager says she is a “troublemaker” because she has given evidence at the Tribunal and as a result should not be promoted. This would be victimisation.

What positive action can employers and trade unions take?

Employers are allowed to take reasonable positive action in favor of people with a particular religion or belief, to help minimise disadvantage, meet their needs, or encourage greater participation at work.

Trade unions can do the same in relation to its members who hold a particular religion or belief, where it seems reasonable to them. For example, if union members holding a particular religious faith are under-represented among union officials, the union could organise training or mentoring to help them achieve this.

Time limits

In some circumstances, 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.

Checklist for stewards

- Be clear on how you stand on behaviour that discriminates against individuals on grounds of religion or belief. Be prepared to challenge insulting 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 religion or belief, 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
- 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 behaviour that discriminates on grounds of religion or belief. Be prepared to challenge insulting 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
- Ensure you are aware of your Trust's policies and procedures on harassment, bullying and discrimination
- Inform all staff that conduct which breaches the policy will not be tolerated and respond quickly and effectively to any such breaches
- Be prepared to deal with acts of discrimination by employees under disciplinary rules and procedures
- Organise training, information sessions and discussions on the issues.
- If you are not sure of your exact responsibilities or need more information and training contact the appropriate department
- Make use of the expertise and knowledge of relevant external organizations
- Monitor the implementation and effectiveness of your policy

E. EXERCISES FOR WORKPLACE MEETINGS: RELIGION OR BELIEF

The following case study is designed to help you initiate discussion at a staff meeting. The purpose is to raise awareness of issues around religious diversity and discrimination, and of how members can tackle discrimination and build a culture of respect and tolerance in the workplace.

CASE STUDY: Michael is a physiotherapist who recently started work in your trust. He is a committed Christian and on a number of occasions has approached staff in the physio department with leaflets and information about his religious beliefs, urging them to attend his church. Some staff have found the content of some of the leaflets offensive, particularly due to the nature of their comments on issues such as abortion and homosexuality. They want something done but are worried that if they complain they may appear to be discriminating on grounds of religion.

What do you think the staff should do about this situation?



Age



A. EXTENT OF DISCRIMINATION

The UK is an ageing population, the proportion of the population aged 65 and over has increased, but the proportion below the age of 16 has decreased over the last 40 years. As a result of this the working age population is shrinking.

Age discrimination at work can occur across all age groups but is more common at the younger and older age ranges, particularly under 25 and over 50.

- The National Audit Office (NAO) described age discrimination as an “ongoing and significant problem” which costs the UK economy between £19 billion and £31 billion a year in lost output, reduced taxes and increased welfare payments²⁴
- An Employers Forum on Age (EFA) survey in 2007 showed that one in three (31 %) see people being managed differently depending on their age
- Unemployment rates are higher for younger people than for older people; however when people over 55 lose their job they are likely to be out of work for longer
- 39 % of people feel that retirement has been forced upon them by their employer due to health reasons or redundancy²⁵
- Research from Age Concern suggests that ageism is more commonly experienced than any other form of prejudice. In 2006, nearly a quarter of people (23 %) reported having experienced ageism at least once during the previous year.²⁶
- Younger workers also suffer from stereotyping and can be viewed as irresponsible, unreliable, or lacking in skills and knowledge just by virtue of their age
- 8 out of 10 young people believe that age discrimination is widespread. Young workers report bullying, being asked to do all the menial tasks and being overlooked for promotional opportunities.

B. ARGUING FOR EQUALITY

The UK population is ageing and there are proportionally fewer school leavers in the available labour market. By 2025, half of the adult population will be aged 50 or over. This change in the demographic make-up of society is also taking place in other industrialised countries and has major implications.

The NHS and the physiotherapy profession are affected by this demographic change. Traditionally, physiotherapy has been seen as a “young” profession, but this is beginning to change as employers begin to develop more creative and non-discriminatory practices in response to the demographic pressures.

The age profile of CSP members in 2019 was as follows:

| Age | Total |
|--------------|---------------|
| 17-20 | 10 |
| 21-30 | 5,592 |
| 31-40 | 16,964 |
| 41-50 | 12,818 |
| 51-60 | 9,699 |
| 61-70 | 2,886 |
| 71 Plus | 576 |
| <i>Total</i> | <i>48,545</i> |

“Older people are less employable because their health deteriorates with age”

The Department for Work and Pensions (DWP) commissioned a study – Facts and misconceptions about age, health status and employability – to see if there was any evidence that age and deterioration of the body and mind were linked in those reaching the age of 65. This research found that the majority of mental and physical ability does not deteriorate with age. Two exceptions were eyesight and hearing, where employers can make the necessary adjustments to accommodate any deficit in these areas. The study examined nine common assumptions employers make about employing older workers. The conclusions were that older adults are vastly different from each other. The study concluded that organisations would benefit from efforts to maintain the ability to work of all employees at any age as well as from the adoption and development of flexible retirement practices that retain older workers longer.²⁷

“Investing in training for an older worker is a poor return on investment”

Training can help to ensure that workers are supported to make the highest contribution to the workplace, regardless of their age. It also helps boost morale by showing staff that they have a valuable part to play in the success of the company. Older workers are also just as likely to successfully complete their training as younger workers and use new skills effectively in the workplace.

“Older people are stuck in their ways”

This is a stereotype with little basis in reality. Because of their experience, older people can be just as receptive to change as younger people. They have witnessed a significant amount already in both their working and personal life, and can bring a fresh perspective to your business because of their experiences.

“If you promote younger staff to senior positions they can’t command sufficient respect from patients”

Patients generally respect people who are good at their job. Younger staff can just as easily command respect through exercising excellent clinical and communication skills. At the end of the day, the most important thing is that the best person gets the job, regardless of age.

“Older people can’t do physical work as well as younger people”

Age doesn’t determine an employee’s ability to do a job. Physical strength and endurance are very specific to individuals, so some older workers may be more physically able than their younger colleagues. Poor workplace design and inflexible working practices are more likely to prevent staff from being fully effective. Physical demands from work can also often be minimised through changes in work design or use of equipment. This is particularly important in physiotherapy.

C. THE EQUALITY ACT 2010

The Equality Act 2010 says that you must not be discriminated against because:

- you are (or are not) a certain age or in a certain age group
- someone thinks you are (or are not) a specific age or age group, this is known as discrimination by perception
- you are connected to someone of a specific age or age group, this is known as discrimination by association.

The Equality Act 2010 applies in England, Scotland and Wales but not Northern Ireland. Age discrimination is outlawed in Northern Ireland along the same lines as the UK, through separate regulations, the Employment Equality (Age) Regulations (NI) 2006.

The default retirement age (65) was abolished across the whole of the UK in 2011. It is no longer lawful to force someone to retire just because they have reached age 65 or any other retirement age fixed by the employer. Any contractual retirement age must be properly justified by the employer.

Who is covered

The Act applies to all employment, including contract workers, temporary workers, casual staff, and self-employed workers where they are personally engaged to do the work.

It 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 age. 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.

Direct discrimination

Direct discrimination occurs when a person is treated less favourably than another on grounds of age. The Equality Act covers treatment based on a perception of

someone's age, even if their actual age is not known, or an assumption made about a person's age is incorrect.

Recruitment processes that state or imply that people of a certain age are more welcome than others are relatively straightforward to challenge.

EXAMPLE: Ryanair lost an age discrimination claim when they advertised for "a young and dynamic professional". Their defence that the word "young" was intended to refer to energy and dynamism rather than age was unsuccessful.

However, unlike direct discrimination in other equality areas, an employer can in some cases lawfully justify direct discrimination. To do this, the employer must show that the treatment was necessary to achieve "a legitimate aim" and that it was "proportionate".

The employer's justification of direct age discrimination must be in the "public interest", not just in their own private interests.

In practice, the categories of acceptable "public interest" aim are very broad. Examples include:

- promoting inter-generational fairness
- promoting workforce diversity
- efficient workforce planning

To avoid breaking the law, the employer must be responding to a real organisational need in their workplace, supported by concrete evidence. In addition, any age discrimination must go no further than is necessary to achieve the social policy aim. This is known as "objective justification".

As long as the employer's reason for treating an employee less favourably because of age has a "social policy" aim, it does not matter that it also suits their own internal purposes.

EXAMPLE: A contractual retirement age will be directly age discriminatory. To avoid breaking the law it must be objectively justified by circumstances at the particular workplace where it is in place.

Indirect discrimination

Indirect discrimination applies to a policy or practice, which on the face of it has nothing to do with age, but which in its practice, operates to the detriment of people of a particular age group.

EXAMPLES:

- Service-related benefits such as service related holiday or notice entitlement, which generally will favor older workers at the expense of younger workers.
- a requirement for IT qualifications which are likely to be more common in younger workers than older.
- flexible hours or shifts which may impact on people in their 30s or 40s who have childcare commitments.

To avoid breaking the law, the employer must be able to show that the policy can be justified as a proportionate means of achieving a legitimate aim.

Harassment

The Equality Act defines harassment as occurring where, on grounds of age, a person subjects another to unwanted conduct which has the purpose or effect of violating their dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

This definition covers a broader range of conduct than might commonly be associated with harassment. The sorts of stereotypical conduct, comments or banter that associate older people with incompetence, ill-health, or inability to cope with technology, may well be regarded as humiliating or contributing to an offensive environment. Likewise, conduct or comments that associate younger workers with unreliability or irresponsibility may fall foul of this definition.

EXAMPLE: Mary is 58 and works in a physiotherapy department with a team of younger colleagues mainly in their 20s and 30s. The team, including the manager, often go out socialising. They do not ask Mary, because they feel that she wouldn't like the venues they choose for such events. However, Mary finds out that many workplace issues and problems are discussed and resolved during these informal meetings. Mary feels undervalued and disengaged by this unintended action. This is a form of harassment, even though unintended, as Mary is being excluded from the team. To prevent this, the manager ought to consider office-based meetings to consult more fully with all staff in decision making to prevent Mary feeling excluded because of her age.

Victimisation

Victimisation applies where someone is treated less favourably because they have brought age discrimination proceedings against their employer; given evidence at proceedings or simply alleged age discrimination.

The individual is protected even if the allegations of age discrimination turn out to be untrue, unless the allegations are shown to have been made in bad faith.

Exemptions

There are some circumstances when being treated differently due to age is lawful.

Genuine Occupational Requirement

The Equality Act will not apply where the employer can show that there is a genuine occupational requirement to do with the nature of the job, which requires the recruitment of a person of a certain age. There will be very few circumstances where age can be a valid occupational requirement for a job. The example that is often given is where an acting part requires an actor of a particular age.

Service-related benefits

Service-related benefits, such as holiday entitlement or pay linked to length of

service, are potentially indirectly discriminatory on grounds of age in that younger workers are less likely to be able to benefit from them than older workers. But because service-related benefits are very common, and in addition are generally regarded by both employers and employees as a useful way of rewarding service, the Equality Act set out an overarching justification for these benefits. Any benefits that depend on less than five years' service are specifically exempted. But where the benefit is dependent on more than five years' service, the employer has to show that it reasonably appears to them that the provision of the benefit fulfils business needs, for example by encouraging loyalty and motivation or rewarding experience.

The exemption relates to service and not to age-related benefits. So if, for example, an employer offered a benefit for workers over a certain age, that is a directly discriminatory benefit (which may or may not be justified) and not an indirect service related benefit. This exemption would therefore not apply to it.

Positive action

The Equality Act allows an employer, training provider or trade union to grant a certain age group or groups access to training or encouragement to take advantage of opportunities to do work, where people of that age group are disadvantaged in relation to work because of their age.

EXAMPLE: An employer would be allowed to target training at older people within an organisation where they have less experience of IT and online data management.

A trade union could take steps to encourage young people to join the union where that group is disadvantaged for reasons linked to age.

Time limits

In some circumstances, 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: <https://www.acas.org.uk/early-conciliation>.

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

Checklist for stewards

- Be clear on how you stand on behaviour that discriminates against individuals on grounds of age. Be prepared to challenge remarks, jokes or behaviour that breach the Equality Act 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
- Check all Trust policies to ensure that they do not discriminate against older or younger staff and if they need revising raise at the Joint Negotiating Committee
- Challenge management – make sure there are equality policies and they have a firm commitment to putting them into practice
- Ensure there are anti-harassment, bullying and discrimination policies in place and they are widely publicized
- 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 prepared to deal with age-related behaviour or 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
- Ensure you are aware of your Trust's policies and procedures on harassment, bullying and discrimination
- Inform all staff that conduct which breaches the policy will not be tolerated and respond quickly and effectively to any such breaches
- Be prepared to deal with acts of age-related discrimination by employees under disciplinary rules and procedures
- Organise training, information sessions and discussions on the issues
- If you are not sure of your exact responsibilities or need more information and training contact the appropriate department
- Make use of the expertise and knowledge of relevant external organisations
- 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
- Monitor the implementation and effectiveness of your policy

E. EXERCISES FOR WORKPLACE MEETINGS: AGE

The following case study is designed to help you initiate discussion at a staff meeting. The purpose is to raise awareness of issues around age discrimination, and of how members can tackle discrimination and build a culture of respect of both younger and older staff in the workplace.

CASE STUDY: Susan is a physiotherapist in your department who is 63 years old and who will be 65 in 6 months' time. She is keen to carry on working beyond the age of 65 although she would like to move from full time hours to part time hours at that point. Last week she went to see her manager to ask for study leave and funding to attend a clinical course. Her manager said that as she was due to retire shortly it was not worth funding her to attend the course. Should Susan be allowed to go on the training course? Could she continue working after age 65?



Appendices



APPENDIX 1: CHECKLIST FOR ALL MEMBERS

Disability

- Be prepared to either challenge or report remarks, jokes or behaviour on the part of colleagues that insult or harass on the grounds of disability
- Do not make assumptions about people: for example that because a person does not look disabled, they are not disabled, or that most disabled people use wheelchairs, or that all visually impaired people read Braille or have guide dogs.
- Do not assume that because a person had a different educational background, for example they attended a school tailored to their disability, that this is of a lower standard

Race

- Be prepared to either challenge or report racist remarks, jokes or behavior on the part of colleagues
- Do not make assumptions about people based on their race, nationality, colour, national or ethnic origins

Gender

- Be prepared to either challenge or report sexist remarks, jokes or behavior on the part of colleagues
- Do not make assumptions about people based on their gender, marital status, or because they are pregnant or have children

Transgender

- Be prepared to either challenge or report trans-phobic remarks, jokes or behaviour on the part of colleagues
- Do not make assumptions about people based on their gender identity or their physical appearance
- Remember it is illegal to disclose a trans person's previous gender status

Sexual Orientation

- Be prepared to either challenge or report homophobic remarks, jokes or behaviour on the part of colleagues or service users
- Do not make assumptions about people's sexual orientation, or family and living arrangements
- Don't assume that because no one at your workplace has told you that they are gay, that therefore everyone is heterosexual

Religion or Belief

- Be prepared to either challenge or report remarks, jokes or behaviour on the part of colleagues that insult or harass on the grounds of religion or belief
- Do not make assumptions about people based on their religion or belief – remember that there is great diversity of belief and opinion within a single religion. Treat everyone as an individual worthy of respect

Age

- Be aware that age-related jokes and behaviour that may previously have been considered acceptable are potentially unlawful harassment, depending on how they are experienced by the target of the jokes
- Do not make stereotypical assumptions about a person's capability or characteristics because of their age or what you think their age is

All

- Be aware of your own bias and gaps in your knowledge
- Think of the language you use – could it cause offence? Terms that are not acceptable and likely to cause offence include handicapped or crippled instead of disabled, and coloured instead of black or BAME
- Uphold your workplace and union policies on discrimination, anti-harassment and bullying
- Raise concerns before they become problems
- Participate fully in workplace equality and diversity training courses
- Seek advice and help from your CSP steward if you experience harassment, bullying or discrimination on any grounds
- If you are a disabled member, a BAME member, or an LGBT+ member, consider joining the WhatsApp and icsp DisAbility Network, BAME members or LGBT+ members networks. You can gain additional sources of peer support and information by following the registration process at www.interactivecsp.org.uk

APPENDIX 2 CASE STUDY ANSWER SHEETS

Disability Case Study

Stephen is a newly qualified physiotherapist who has just started his first Band 5 post at your trust. He is struggling to keep up with his workload of patients, particularly his notes. His manager has already spoken to him about this a few times and has warned him that unless he improves his performance she will be forced

to take formal action. Stephen has dyslexia but when he applied for this post he decided not to mention it because he thought it would count against him and given the high competition for newly qualified Band 5 posts he did not want to run this risk. When he was at university and on clinical placements he had lots of support and was able to perform well. However, in his new post he is finding it very difficult to see the same number of patients as his Band 5 colleagues mainly because of the time it takes to write up patient notes and carry out initial assessments. He does not know whether to tell his manager about his dyslexia or what support could be made available. What impact could this situation have on other staff?

What support do you think could be made available to Stephen?

Under the Equality Act a person has a disability where there is a physical or mental impairment, which has a substantial and long-term adverse effect on their ability to carry out day-to-day activities. Dyslexia is recognised as a disability under the EQUALITY ACT. An individual with dyslexic difficulties will need to show that their difficulties relate to all aspects of their life, not just to the particular situation in question. In this case Stephen should be able to show that the EQUALITY ACT applies, although any good employer should treat any form of dyslexia in this way. Employers must make reasonable adjustments to their premises or employment arrangements if these substantially disadvantage a disabled employee. Adjustments for dyslexic people can be simple and inexpensive. Stephen should tell his manager about his condition in order to access the support available. He should also request a meeting with his manager supported by his CSP steward to discuss his needs. Many physiotherapists with dyslexia report that they face more problems in the workplace after qualifying if managers have not worked with dyslexic staff before, as they often receive good support via their HEIs when on clinical placements.

Stephen may already have a clear idea of the kinds of reasonable adjustments that would help him, such as allowing extra time with patients particularly for the initial assessments, and extra time to write up notes. Support needed from others could also be discussed – for example asking people to give Stephen verbal instructions and voicemail messages rather than emails, encouraging colleagues not to disturb him unless absolutely necessary, finding a quiet room without distractions for him to use to write up notes. It will be down to Stephen to work out what works best for him.

If the adjustments needed are more expensive, such as a voice activated computer or reader, the employer can apply for funding through the Government's Access to Work scheme. Stephen will also be able to access advice via this scheme about what other kinds of support, such as specialist skills training, may be available.

Organisations such as the British Dyslexia Association have websites that provide support and advice.

The steward could also encourage Stephen to join the CSP Disability Network where he would be able to get in contact with other physios who are dyslexic who may be able to offer advice and tips on coping strategies in the workplace.

Race Case Study

Indira is a Band 6 physiotherapist who qualified as a physiotherapist in India and came to the UK to work in the NHS 15 years ago. She has worked at her trust as a Band 6 for the last 7 years. She has been applying for Band 7 vacancies in the same department for the last 2 years but has not been successful. She feels that she has not been encouraged to apply for these posts. She also always seems to be at the bottom of the queue for study leave. She feels that she is being discriminated against because of her ethnic origin and the fact that she qualified overseas. What do you think Indira should do next?

In this example it would be useful for Indira to talk to her steward, who may be able to carry out some investigative work looking at the information the trust collects on staff. There should be data showing the grade distribution of staff by ethnic origin (along with other comparators such as gender) particularly as in this case there may be multiple discrimination taking place. This may show that the trust has a poor track record across all staff groups and this is something that could be taken up by the local joint negotiating committee.

The trust has a legal duty under the Equality Act 2010 to promote race equality and should be working with the staff side to do this. What training is provided to managers? Should the trust be doing more to raise managers' awareness about discrimination and equality and their legal duties? Is race awareness training provided for all staff?

The CSP steward could organise a meeting with Indira and the manager to discuss her future career. Indira should make a note of the CPD opportunities she has applied for and attended or been refused and see how this compares to other staff in the department. Has Indira had an annual review with a clear personal development plan to help her develop her skills to the next level? Are there any mentoring schemes in place within the trust that could help her?

Indira could also join the CSP network group for black and minority ethnic (BAME) members. This would give her an opportunity to discuss her situation with other CSP BAME members and seek their advice and experience.

Maternity 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?

Since 2014, all employees with at least 26 weeks' continuous service are entitled to make a formal request to work flexibly.

If the employer feels that it is not possible to accommodate such a request they must write to the employee providing written, objectively justifiable reasons for their refusal which the employee can then appeal against.

In addition the maternity rights section of the NHS Terms and Conditions Handbook states "An employee has the right to return to her job under her original contract and on no less favourable terms and conditions" (para 15.26).

The agreement also makes it clear that if the employee wishes to return to work on different hours the NHS employer has a duty to facilitate this wherever possible with the employee returning to work on different hours in the same job.

If this is not possible the employee should return to the same grade and work of a similar nature and status.

In this case there is no reason given why Judy's manager feels she cannot return to her old post on a part time basis. The steward should arrange a meeting with Judy and the manager to discuss this, and if an agreement cannot be reached, she should ask the manager to provide written reasons for refusing Judy's request using the rights as defined in the NHS T&C Handbook. The fact that Judy has managerial responsibilities is not reason enough to refuse to allow her to work part time or job share.

The steward could also find out whether the employer has a job share policy and use this to argue that an attempt should be made to find a job share partner for her. There may be other policies under the Improving Working Lives initiative that might help negotiate an agreement. Are there other physiotherapists or perhaps nurses or other staff with similar job responsibilities who are already working part time or job sharing which could be used as a precedent? There may be other suitably qualified and experienced physiotherapists currently working full time who might be interested in a job share arrangement.

Judy and her manager could also discuss other options for part time work in a job at the same grade and of similar status to her old post. Ideally a suitable arrangement will be reached by exploring all the options, although as a last resort Judy could consider using her local grievance procedure if she and the steward felt that her case was a strong one and that no robust objections had been put to them.

Transgender case study

Claire, one of your colleagues, is in charge of the hydrotherapy pool. A postoperative male to female transgender patient needs to have hydrotherapy treatment and is keen to attend the female only sessions that your trust runs. Hydrotherapy

colleagues have expressed concern to Claire about the reaction of the other female patients. Claire has also heard it reported that one of the physiotherapy hydro staff has been voicing strong concerns in the staff room and has made inappropriate references to the patient, for example “I don’t know whether to call them he, she or it”, and “Should they be allowed to use the women’s toilet?”

What do you think Claire should do?

There is now a significant body of law that protects the rights of trans people in society. The Equality Act 2010 makes discrimination against transsexual people in provision of goods and services illegal. It is also unlawful to treat a transsexual person any less favourably on the grounds of their gender reassignment or to subject them to harassment. The Act makes clear that all requirements relating to the promotion of equality for men and women include transsexual people. Consultation with service users is a legal requirement for this and this should include trans people.

It is appropriate to provide services and support in a different way for trans people if it is necessary to deliver the same levels of dignity and quality of care. Claire should discuss any particular needs with the patient, for example if only communal changing areas exist, she may require greater privacy than is currently available. An assumption has been made that other patients will have a problem over shared use of the hydrotherapy pool but there is no evidence that this is the case. It is never acceptable to require someone who has undergone gender reassignment to use toilets or other facilities designated for members of their birth gender.

In this example there is clearly a need for the manager to arrange awareness raising training for staff. This should include issues such as how to address a trans person, as mistakes involving gender related speech are often the most upsetting ones for trans people. Staff should also be aware of issues around confidentiality – there are strict rules around disclosure of a person’s gender history when received in an official capacity such as via medical records or information. This includes giving away such information either deliberately or accidentally to other patients or staff. The member of staff making derogatory comments about the trans patient is in breach of the employer’s equality policy, which is potentially a disciplinary matter and the manager should make this clear to them.

Sexual orientation case-study

Michelle, a physiotherapy colleague, who recently started work at your trust and with whom you are friendly, asks to speak to you in confidence. She tells you that she is gay but you are the only person in the department who knows, as she does not feel comfortable coming out at work yet. This is mainly because another colleague has been making homophobic jokes and remarks in the staff room when referring to articles in the newspaper. You have also overheard the same person making a number of disparaging remarks about a patient who is believed to be gay, referring to him in abusive language and making jokes about his partner who sometimes accompanies him. This is never done within the earshot of the patient.

Other colleagues in the department have not made any comments about this colleague's behaviour but tend to smile and raise no objections. Michelle asks your advice on what to do but does not want to take any action that might out her at this time.

What do you think is the best thing to do?

The Equality Act 2010 outlaws discrimination on grounds of sexual orientation, as well as harassment and victimisation.

Harassment is defined as subjecting someone to unwanted conduct that violates their dignity or creates an intimidating, hostile, degrading, humiliating or offensive environment. It does not matter whether the harassment is intentional or unintentional. In this case, for example, the offender may try to argue that the comments were not intended to offend (i.e. they were made out of the earshot of the patient known to be gay), but this is not a defence. If such comments are permitted in a workplace, it creates a hostile and offensive environment for any LGBT+ staff who may work there (like Michelle), as well as other staff who may not be gay but who may well be upset by the comments. This behaviour is therefore in breach of legislation, and almost certainly in breach of the Trust Equal Opportunity Policy.

It is hardly surprising that Michelle feels unable to come out at work, and it is very unlikely that she will feel able to do so until a safe working environment exists. Michelle should consider joining the CSP LGBT+ network, which exists to provide ongoing peer support to LGBT+ members at work.

If Michelle brings the matter to the attention of a CSP steward, the steward will have a responsibility to ensure that the matter is brought to the attention of management.

The point needs to be made that both patients and staff have the right to be treated and work in an environment free from discrimination and harassment. The behaviour of the colleague making the comments is in breach of the employers' own harassment policy and must be dealt with accordingly. Any member of staff overhearing such comments should raise this with the steward and/or manager as this type of behaviour is also impacting on the quality of care provided to the patient. There is clearly a need for training for all staff on their obligations under discrimination legislation. Equal opportunities training should be mandatory for all employees and if this is not being undertaken, or if sexual orientation is not being included, the Trust is failing in its duty of care. The manager also has a clear duty towards both staff and patients to make sure this behaviour does not recur by making it clear that it is unacceptable and ensuring that staff are offered and attend relevant training courses.

Religion or belief case study

Michael is a physiotherapist who recently started work in your trust. He is a

committed Christian and on a number of occasions has approached staff in the physio department with leaflets and information about his religious beliefs, urging them to attend his church. Some staff have found the content of some of the leaflets offensive, particularly due to the nature of their comments on issues such as abortion and homosexuality. They want something done but are worried that if they complain they may appear to be discriminating on grounds of religion. What do you think the staff should do about this situation?

Michael's actions amount to harassment as defined in anti-discrimination legislation as behaviour that "creates an intimidating, hostile, degrading, humiliating or offensive environment". He is also very likely to be in breach of his employer's equality and harassment policies. Additionally most, if not all, employers forbid the circulation of any kind of material in the workplace not directly related to the employer's business. If management are aware that he is circulating these materials and have not acted to stop it they are vicariously liable for the subsequent harassment and distress to staff.

It is not up to individuals to challenge a member of staff who is clearly in breach of workplace policies and procedures in this way – the behaviour should be reported immediately to management to deal with. However, it is important to realise that it does not amount to discrimination on the grounds of religion to respectfully challenge someone who is behaving inappropriately just because they belong to a religious group.

Age case study

Susan is a physiotherapist in your department who is 64 years old and who will be 65 in 6 months' time. She is keen to carry on working beyond the age of 65 although she would like to move from full time hours to part time hours at that point. Last week she went to see her manager to ask for study leave and funding to attend a clinical course. Her manager said that as she was due to retire shortly it was not worth funding her to attend the course. Should Susan be allowed to go on the training course? Could she continue working after age 65?

The Equality Act 2010 provides protection against discrimination on grounds of age.

Susan also has a statutory right to ask to work flexibly, as long as she has at least 26 weeks' service, and this may help her as she approaches her retirement.

The NHS Employers website has information explaining how pension scheme members may be able to take advantage of career end flexibilities (with certain provisos) such as:

- Increased pensions for late retirements
- Ability to continue to work and draw down part of their pension whilst continuing to build up pension rights
- Increased options and greater flexibility in the run up to retirement

NHS Employers provide examples on their website promoting good practice in the area of flexible retirement, including flexible working arrangements in the period before retirement. These can include “wind-down” (working fewer days/ hours), or “step-down” (into a less demanding job which makes use of their skills or experience).

Susan should discuss these options with her manager supported by her CSP steward.

If Susan’s manager turns down her application for study leave and funding for a clinical course on the grounds that she is close to retirement this could amount to direct discrimination under the Equality Act. An employer must be able to justify direct age discrimination but the justification must be based on a valid social policy reason. Age discrimination will not be justified simply because it is more expensive not to discriminate.

Susan’s manager should discuss her training needs with her to ensure that the training course is appropriate and suited to her duties in her new part-time role.

USEFUL LINKS AND FURTHER READING

General

ACAS

Helpline 08457 474747

Text phone 08456 06 16 00

www.acas.org.uk

Chartered Society of Physiotherapy

CSP Guide to Organising Events and many other publications listed on page 10.

www.csp.org.uk

Health Professions Council (HPC)

The HPC is a regulator, and keeps a register of professionals from 14 health professions who meet HPC standards for their training, professional skills, behaviour and health.

www.hpc-uk.org

Thompsons

Thompsons is a UK-wide personal injury firm representing employees and providing valuable information on employment rights and equality. It has produced a series of Guides including Age Discrimination, Disability Discrimination, Equal Pay, Family Friendly Rights, Part-time Workers – A Guide to the Law, Pregnancy and Maternity, Race Discrimination, Religion or Belief, Sex Discrimination and Sexual Orientation.

All are available at www.thompsons.law.co.uk

Equality and Human Rights Commissions

Helpline England 0845 6046610

Text phone England 08456046620

England email queries: englandhelpline@equalityhumanrights.com

Helpline Wales 0845 6048810

Text phone Wales 0845 6048820

Wales email queries: waleshelpline@equalityhumanrights.com

Helpline Scotland 0845 6045510

Text phone Scotland 08456045520

Scotland email queries: scotlandhelpline@equalityhumanrights.com

Northern Ireland Human Rights Commission

Helpline: 028 9024 3987

Text phone: 028 9024 9066

Email queries via www.nihrc.org

Trades Union Congress

The TUC publishes a range of advice for unions on all aspects of employment.

Much of this is available free of charge from the TUC website, www.tuc.org.uk

UK Health Departments

England

The Department of Health website has a section devoted to equality, diversity and human rights setting out policy and good practice on a full range of equality issues to meet the diverse needs and experiences of staff, patients and service.

www.dh.gov.uk/en/Managingyourorganisation/Equalityandhumanrights/index.htm

NHS Employers represents trusts in England on workforce issues including employment policy and practice. Their website includes a section on equality and diversity offering a broad range of advice, guidance and practical support for trusts.

www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityandDiversity/Pages/Home.aspx

Northern Ireland

The Department of Health has a website section devoted to equality which includes a range of advice and guidance for staff both as employees and service providers.

The Department of Health's equality scheme is published here:

www.health-ni.gov.uk/doh-equality

Scotland

NHS Scotland website has information about its Diversity Task Force, equality impact assessments and the Equalities and Planning Directorate which provides support to NHS Boards on delivering equality.

www.show.scot.nhs.uk/diversity_inclusion/index.aspx

Wales

The Welsh Assembly Government has a webpage setting out how its equality agenda is implemented within Wales including NHS Wales.

Welsh language version

<http://new.wales.gov.uk/topics/equality/?lang=cy>

English language version

<http://new.wales.gov.uk/topics/equality/?lang=en>

Some NHS Wales specific information is also to be found at the following sites under the Welsh Partnership Forum section:

Welsh language version <http://new.wales.gov.uk/topics/health/nhswales/?lang=cy>

English language version

<http://new.wales.gov.uk/topics/health/nhswales/?lang=en>

Disability

Access to Work

AtW is contacted through the Disability Employment Adviser at a Jobcentre Plus office. Information about the scheme is found at: www.jobcentreplus.gov.uk.

Information about Access to Work in Northern Ireland is available here:

www.nidirect.gov.uk/articles/access-work-practical-help-work

Department for Work and Pensions

The DWP website contains up to date information on the law, advice for employers and for individual disabled people, plus benefits, information and more.

www.dwp.gov.uk

Employers Forum on Disability

An employers' organisation whose mission is to enable companies to become disability confident by making it easier to recruit and retain disabled employees and to serve disabled customers.

www.efd.org.uk/

Tel: 02074033020

Email: enquiries@efd.org.uk

Skill: National Bureau for Students with Disabilities

A national charity promoting opportunities for young people and adults with impairments in post 16 education, training and employment.

www.skill.org.uk/index.aspx

Telephone and textphone: 02074500620

Email: skill@skill.org.uk

RNIB Allied Health Professions Support Service

RNIB Resource Centre

University of East London

Stratford Campus

Water Lane

Stratford Lane
London E15 4LZ
Tel: 02082234950, or 07748657457

Various organisations of and for people with a wide range of impairments, including the Royal National Institute of Blind People (RNIB), the Royal National Institute for Deaf People (RNID), the National Association for Mental Health (MIND), the British Dyslexia Association (BDA), The Dyspraxia Foundation and SCOPE.

Race

National Assembly Against Racism (NAAR)

Established in the 1990s at the initiative of black community organisations in East London in opposition to the BNP, the Executive includes reps from the Churches Commission for Racial Justice, Jewish Council for Racial Equality, national trade unions, and black and refugee organisations.

www.naar.org.uk

Searchlight

Searchlight Magazine is a key source of information on the activities of the far right, both in the UK and overseas, is published monthly and available online or by subscription at **www.searchlightmagazine.com**

Unite against Fascism (UAF)

UAF aims to unite the broadest possible spectrum of society to counter the threat of the extreme right, in particular the BNP, from gaining an electoral foothold in the UK.

www.uaf.org.uk

Trades Union Congress (TUC)

TUC Workbook, Tackling Racism, available from the TUC on 02074671294 price £5 for unions.

Gender

Women's National Commission

The WNC is the official, independent, advisory body giving the view of women to the UK Government.

www.thewnc.org.uk

National Assembly of Women

Founded in 1952 NAW works for full social, economic, legal, political and cultural independence and equality for women

www.sisters.org.uk

Rights of Women

ROW is a not-for-profit organisation which runs a free legal advice telephone service

for women and produces publications on women's rights.

www.rightsofwomen.org.uk

Email: info@row.org.uk

Tel: 020 7251 6575/6

Advice Line: 0207 251 6577

Fawcett Society

Fawcett campaigns for equality between women and men in the UK on pay, pensions, poverty, justice and politics

www.fawcettsociety.org.uk

Tel: 020 7253 2598

Breast Cancer Care

www.breastcancercare.org.uk/

Cancer Research UK

www.cancerresearchuk.org/

Macmillan Cancer Support

www.macmillan.org.uk/

Women's Aid Federation

The national charity working to end domestic violence against women and children

www.womensaid.org.uk

End Violence Against Women (EVAW)

A coalition made up of organisations tackling violence against women, alongside the Women's National Commission, Amnesty International (UK) and the Trades Union Congress (TUC)

www.endviolenceagainstwomen.org.uk

Sexual Orientation

Stonewall

Stonewall is a campaigning and lobbying group that has published a number of useful research reports in the last few years including a report commissioned by the Department of Health, "Being the Gay One: Experiences of lesbian, gay and bisexual people working in the health and social care sector", and a joint report with NHS Employers "Working with lesbian, gay or bisexual people: A ten point action plan", 2007. **www.stonewall.org.uk**

Trades Union Congress (TUC)

LGBT+ Equality in the Workplace: A TUC Guide for Union Negotiators on lesbian, gay, bisexual and trans issues, TUC, 2006, **www.tuc.org.uk**

Religion or Belief

Department of Health

Religion or Belief: A Practical Guide for the NHS, Department of Health, 2009,
www.dh.gov.uk/publications

Trades Union Congress

TUC Guide to Equality Law, TUC, 2005 Winning in the Workplace: A TUC Education Course for Equality Reps, TUC 2009, www.tuc.org.uk

ACAS

Religion or Belief and the workplace: A guide for employers and employees, ACAS 2009,
www.acas.org.uk

Transgender

Transgender experiences – information and support, Department of Health, 2009,
www.dh.gov.uk/publications

Transgender and work: your rights in employment and vocational training, EHRC

June 2008,
www.equalityhumanrights.com

Out at Work: A Unionlearn/TUC Education workbook on LGBT+ people in the workplace,

TUC, 2007.
Gender Equality Duty – Guidance for NHS Scotland: Making a difference for women and men, including transsexual people, www.healthscotland.com

Trans: A Practical Guide for the NHS,

Department of Health 2008,
www.dh.gov.uk/publications

Press for Change

Press for Change is a political lobbying and educational organisation which campaigns for equal rights for all trans people in the UK through legislation and social change.
www.pfc.org.uk

The Gender Trust

The Gender Trust is a charity set up to support all those affected by gender identity issues.
www.gendertrust.org.uk
National helpline: 0845 2310505

Age

www.acas.org.uk

Promoting equality for older workers – a guide for union reps, Labour Research Department, October 2008

Young Workers – a guide for union reps, Labour Research Department, December 2007.

Age Concern

The four national Age Concerns have joined together with Help the Aged to form new national charities. Through such services as befriending schemes, day centres, lunch clubs and a national freefone helpline – the Age Concern Information Line – they are the largest provider of services to older people after the NHS.

For more information and details of your local Age Concern in England, please call the free information line on 0800 009966 or visit www.ageconcern.org.uk. In Northern Ireland, Scotland or Wales, contact: Age Concern Northern Ireland Tel: 028 9032 5055 (national call rate) www.ageconcernni.org Scottish Helpline for Older People (Age Concern Scotland) Tel: 0845 125 9732 (lo-call rate) www.olderpeoplescotland.org.uk

www.ageconcernscotland.org.uk

Age Concern Cymru

Tel: 029 2043 1555 (national call rate)

www.accymru.org.uk

Employers Forum on Age

Independent network of employers who recognise the value of an age diverse Workforce, advise the Government on age-related policy issues and campaign against age discrimination.

Tel: 0845 4562495

Email: efa@efa.org.uk

FOOTNOTES.

¹Talent not Tokenism:

the business benefits of workplace diversity, June 2008 www.tuc.org.uk/extras/talentnotokenism.pdf

² NHS Briefing 60 Managing Diversity Making it Core Business, April 2009 www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityAndDiversity/BusinessCaseForDiversity/Pages/BusinessCaseForDiversity.aspx

³ Equality Impact Assessments in the NHS: A Guide for Employers, Briefing 49, January 2009. <http://tinyurl.com/ydlhh2b>

⁴ Equality and Human Rights Commission (EHRC), British Workplace Behaviour Survey, 2008

⁵ Industrial Injuries, August 2005, <http://tinyurl.com/ydjddtq>

⁶ Direct Gov website <http://tinyurl.com/3b3m7w>

⁷ Tackling the Challenge: Promoting Race Equality in the NHS in England, Healthcare Commission March 2009 www.healthcarecommission.org.uk

⁸ National NHS Staff Survey 2007, <http://tinyurl.com/yeepyn4>

⁹ Health Service Journal, 6 November 2008

¹⁰ Domestic Violence Factsheet, Government Equalities Office, www.equalities.gov.uk

¹¹ http://bbc.co.uk/health/womens_health/issues_cervicalcancer.shtml

¹² www.womensaid.org.uk

¹³ www.nhsemployers.org/HealthyWorkplaces/DomesticAbuse/Pages/DomesticViolence-TheHiddenEpidemic.aspx

¹⁴ <http://tinyurl.com/ydx8rlc>

¹⁵ Department of Health, Transgender experiences – Information and Support, 2009, www.dh.gov.uk/Publications

¹⁶ TUC, LGBT Equality in the Workplace: A TUC Guide for Union Negotiators on Lesbian, Gay, Bisexual and Trans issues, 2006

¹⁷ Stonewall, Living Together: British Attitudes to Lesbian and Gay People, 2007, www.stonewall.org.uk/healthcare

¹⁸ Stonewall, Serves You Right, 2008, www.stonewall.org/servesyouright

¹⁹ Example adapted for Worksheet 6 in Sexual Orientation: A Practical Guide for the NHS, Department of Health, 2009

²⁰ TUC, Winning in the Workplace: A TUC Education Course for Equality Reps, 2009

²¹ www.nhsemployers.org/EmploymentPolicyAndPractice/EqualityAndDiversity/Pages/DressCodesAndDiscrimination.aspx

²² Case study from Religion or Belief: A Practical Guide for the NHS, Department of Health, 2009

²³ ACAS, Religion or Belief and the Workplace: A Guide 2009, www.acas.org.uk

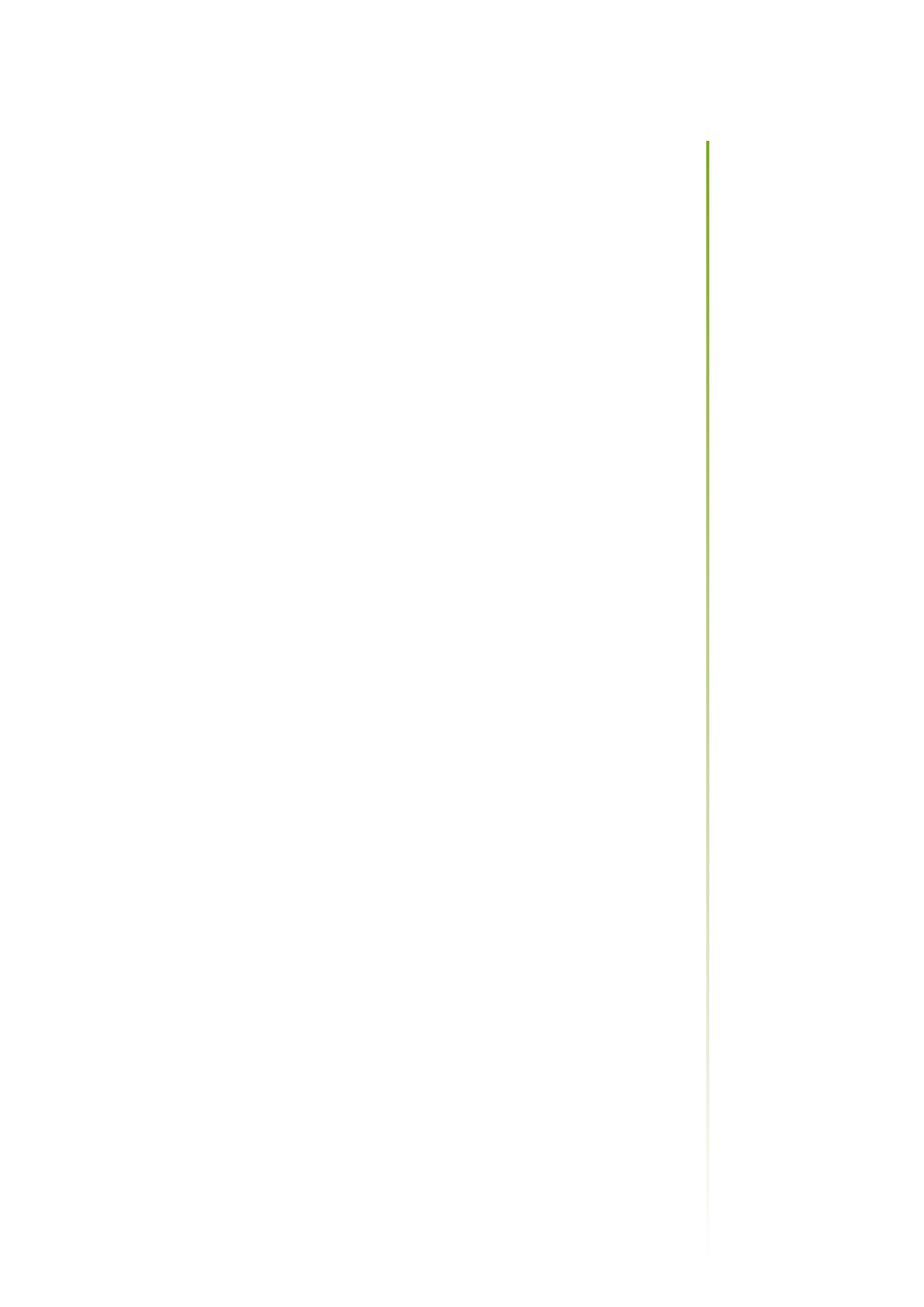
²⁴ NAO report, 2004

²⁵ DWP, Humphrey, Costigan, Pickering, Stratford and Barnes, Factors Affecting the Labour Market Position of Older Workers, 2003

²⁶ Age Concern England, Ageism in Britain 2006, An Age Concern Research Briefing, 2008, www.ageconcern.org.uk

²⁷ www.nhsemployers.org/Olderworkers

²⁸ Questions Adapted from NHS Ageism Factsheet from material devised by Employers Forum on Age, www.nhsemployers.org





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London WC1R 4ED

Web: **www.csp.org.uk**

Email: **enquiries@csp.org.uk**

Tel: **020 7306 6666**

THE CHARTERED SOCIETY OF PHYSIOTHERAPY

is the professional, educational and trade union body for the United Kingdom's 59,000 chartered physiotherapists, physiotherapy students and support workers.