

| |
|--|
| <h2 style="margin: 0;">Equality & Human Rights Policy</h2> |
|--|

| | |
|-----------------------------------|--|
| Version | 3.0 |
| Designation of Policy Author(s) | Equality & Inclusion Lead |
| Policy Development Contributor(s) | Head of Culture and Staff Experience, Equality & Inclusion Lead Associate Director of Workforce, Matron for Patient Experience, Deputy Head of Patient Experience. |
| Designation of Sponsor | Chief People Officer |
| Responsible Committee | Putting People First Committee |
| Date ratified | 06/10/2022 |
| Date issued | 27/10/2022 |
| Review date | 27/10/2025 |
| Coverage | Trust Wide |

The Trust is committed to a duty of candour by ensuring that all interactions with patients, relatives, carers, the general public, commissioners, governors, staff and regulators are honest, open, transparent and appropriate and conducted in a timely manner. These interactions be they verbal, written or electronic will be conducted in line with the NPSA, 'Being Open' alert, (NPSA/2009/PSA003 available at www.nrls.npsa.nhs.uk/beingopen and other relevant regulatory standards and prevailing legislation and NHS constitution)

It is essential in communications with patients that when mistakes are made and/or patients have a poor experience that this is explained in a plain language manner making a clear apology for any harm or distress caused.

The Trust will monitor compliance with the principles of both the duty of candour and being open NPSA alert through analysis of claims, complaints and serious untoward incidents recorded within the Ulysses Risk Management System.

CONTENTS

| Content | Page |
|--|-----------|
| 1 Executive Summary | 3 |
| 1.1 Policy Scope | 3 |
| 2 Introduction | 3 |
| 3 Policy Objectives | 4 |
| 4 Duties / Responsibilities | 6 |
| 4.1 Management Responsibilities (including Directors, Heads of Service, Managers | 6 |
| and Supervisors)..... | 6 |
| 4.2 Equality and Inclusion Lead | 6 |
| 4.3 Equality, Diversity and Inclusion Committee..... | 7 |
| 4.4 Individual staff in the Trust | 7 |
| 5 Main Body of Policy | 7 |
| 5.1 Public sector equality duties: | 7 |
| 5.2 Equality Impact Assessments | 8 |
| 5.3 Duty to make 'reasonable adjustments' | 8 |
| 5.4 Patients and services | 9 |
| 5.5 Recruitment, selection and promotion of staff | 10 |
| 5.6 Training and Development..... | 11 |
| 5.7 Service delivery – public and patient involvement | 11 |
| 5.8 Complaints of unlawful discrimination..... | 11 |
| 5.9 Harassment at work | 12 |
| 5.10 Procurement..... | 12 |
| 5.11 Modern Day Slavery | 12 |
| 5.12 Monitoring | 13 |
| 6 Key Reference | 13 |
| 7 Associated Documents | 13 |
| 8 Training | 14 |
| 9 Policy Administration | 15 |
| 9.1 Consultation, Communication and Implementation | 15 |
| 9.2 Monitoring Compliance with the Policy | 16 |
| 9.3 Performance Management of the Policy..... | 16 |
| 10 Appendices | 17 |
| 10.1 Appendix 1 Glossary | 17 |
| 10.2 Appendix 2 - A Human Rights Based approach to healthcare | 22 |
| 10.3 Appendix 3 List of Human Rights..... | 25 |
| 10.4 Appendix 4 - Human Rights relevant to Healthcare..... | 26 |
| 11 11 Initial Equality Impact Assessment Screening Tool | 29 |

1 Executive Summary

1.1 Policy Scope

- i. This policy applies to all Trust employees, contractors and temporary workers, together with any applicants for employment in the Trust, service users and/or any external persons who have a connection with the business of the Trust.
- ii. This policy covers all aspects of employment including recruitment and selection, terms and conditions of employment, training and development, and equal opportunities for all staff employed by Liverpool Women's NHS Foundation Trust.
- iii. This policy also covers all aspects of service delivery including access to services, appointments, referrals and discharge, treatment and care, consultation, communication, access to information and complaints.

2 Introduction

- i. Liverpool Women's Hospital NHS Foundation Trust is committed to creating an inclusive organisation, which seeks to recognise diversity, promote equal opportunities and supports Human Rights in the provision of health services for the communities it serves and in its practice as a leading employer.
- ii. Equality, Diversity and Human Rights are central to the vision, Trust Strategy at Liverpool Women's Hospital NHS Foundation Trust. Our ambition is to be an outstanding employer, listening to our staff, attracting outstanding people to deliver outstanding care, targeting inequality and making sure our staff and volunteers are truly representative of our community. To achieve this we will recruit and retain key clinical staff, and be recognised as the most inclusive organisation in the NHS with Zero discrimination for staff and patients (zero complaints from patients, zero investigations).
- iii. In order to do this we endeavour to meet our Public Sector Equality Duties (General Duties) described by the Equality Act 2010, which includes having due regard to the need to:
 - Eliminate unlawful discrimination, harassment, 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.
- iv. The Trust is also committed to deliver the expected outcomes as identified in the national Equality Delivery System (EDS 2022) and meet the specific equality duties defined by the Equality Act 2010.
- v. The Trust will annually publish data relating to the mandatory Workforce Race Equality Standard annually as required and for the produce and progress associated action plans.

- vi. The Trust will ensure it is compliant with the needs of the Accessible Information Standard and ensure that patient's needs for information to be provided in alternative formats will be met upon request.
- vii. The Trust is committed to promoting positive measures that eliminate all forms of unlawful or unfair discrimination on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, religion or
- viii. belief, sex or sexual orientation as defined by the Equality Act 2010, and also members of other known vulnerable groups including asylum seekers, street workers and homeless individuals.
- ix. The Trust recognises the impact that effective implementation of a Human Rights based approach to Healthcare has upon an organisation and is committed to embedding the 'FREDA' principles (Freedom, Respect, Equality, Dignity, Autonomy) into all areas of the Trust. (see Appendix 2).

3 Policy Objectives

- i. The aim of this policy is to build a fully inclusive organisation. This will be achieved by:
 - Serving our local communities in a way which is appropriate, accessible and responsive
 - Making the best use of the range of talent and experience available within both the current and future workforce.
 - Fulfilling our legal obligations as defined in the Equality Act 2010 and the Human Rights Act 2008.
 - Fulfilling its commitment to delivering the expected outcomes as identified in the national Equality Delivery System (EDS 2022).
 - Recognising the impact that effective implementation of a Human Rights based approach to healthcare has upon an organisation and is committed to embedding the FREDA principles into all areas of the Trust.
- ii. This policy describes the actions needed to ensure that the Trust meets its statutory requirements as defined by the Equality Act 2010 and to support the Human Rights of patients, visitors and employees in the Trust as defined by the Human Rights Act 2008, to ensure that it anticipates the consequences of its actions on our local communities and ensure that as far as possible, negative consequences are eliminated and opportunities for promoting equality are maximised wherever possible.
- iii. There are general duties that the Trust has to comply with, including having due regard to the need to:
 - Eliminate unlawful discrimination and harassment of any person possessing any of the 'protected characteristics' given legal protection under the Equality Act 2010. The protected characteristics include:
 - Age
 - Disability
 - Gender reassignment
 - Marriage and civil partnership
 - Pregnancy and maternity

- Race
- Religion or belief
- Sex
- Sexual orientation

- Promote equality of opportunity
- Promote anti-racism and good race relations
- Promote positive attitudes towards disabled, LGBTQ+ and racially minoritized groups
- Encourage participation in public life by people from protected characteristics
- Eliminate discrimination that is unlawful under the Equal Pay Act 1970

iv. There are also specific duties on the Trust to:

- Identify all functions and policies that are relevant to the general duties
- Assess, consult on and monitor the impact of these policies/functions on the general duty
- Publish the results of the assessments, consultations and monitoring of the process (section 5.12 outlines the specific monitoring requirements)

v. The Trust endorses the following principles in relation to equality and human rights issues:

- To ensure that the health and wellbeing of all our patients and staff are at the heart of everything we do.
- To ensure active engagement with the public, our patients, staff and clinicians.
- To work through partnership to achieve mutual benefit.
- To respect individuals and embrace the diversity of our patients and staff.
- To work with integrity and honesty.

vi. The Trust publishes data relating to the mandatory Workforce Race Equality Standard (WRES) and Workforce Disability Equality Standard (WDES) annually as required and for the production and progression of associated action plans.

vii. The Trust is compliant with the needs of the Accessible Information Standard and for ensuring processes are in place for staff to obtain information in accessible formats on request.

viii. Liverpool Women's NHS Foundation Trust fully embraces its responsibilities to be fully inclusive and to challenge and tackle inequalities. It will endeavour to introduce a human rights based approach in discharging its functions and aims to put equality and human rights at the heart of policy, planning, commissioning and delivery of services in order to protect the rights of everyone.

4 Duties / Responsibilities

4.1 Management Responsibilities (including Directors, Heads of Service, Managers and Supervisors)

- i. All managers and service leads are responsible for implementing this policy in the areas they are responsible for and for maintaining high standards of equality and human rights practice.
- ii. All managers must ensure that:
 - They lead by example adopting personal standards of behaviour which treat all employees with dignity and respect.
 - Staff are aware of this policy and its location.
 - All staff grievances and patient complaints are dealt with fairly, appropriately and in a timely manner.
 - All staff are aware of their individual responsibility for the promotion and practice of equal opportunities and the avoidance of discrimination.
 - Patients are made aware of the policy in general patient information.
 - They fully support and undertake Equality Impact Assessment (EIA's) on all policies, functions, service changes or reconfigurations and cost improvement initiatives within the areas they have responsibility for.

4.2 Equality and Inclusion Lead

- i. The Equality & Inclusion Lead has responsibility for ensuring:
 - The Trust meets all statutory requirements to ensure compliance with both the general and specific Equality Duties as defined by the Equality Act 2010.
 - Delivery of the expected outcomes as identified in the national Equality Delivery System (EDS 2022), providing reports as required to relevant assurance committees.
 - The Trust publishes data relating to the mandatory Workforce Race Equality Standard (WRES), Workforce Disability Equality Standard (WDES) and Gender PAY Gap reporting annually as required and for the production and progression of associated action plans.
 - The Trust is compliant with the needs of the Accessible Information Standard and for ensuring processes are in place for staff to obtain information in accessible formats on request.
 - Development of the Trusts Equality Objectives, overseeing their implementation to ensure integration of equality and human rights into mainstream services and corporate functions.
 - All equality impact assessments are completed and quality assured for all policies, functions, service changes or reconfigurations and cost improvement initiatives.
 - Key stakeholders have access to available support and information on equality and diversity issues.
 - Monitoring of processes employed in Trust where discrimination could potentially be introduced (e.g., recruitment and selection or disciplinary and grievance processes) to ensure that no particular protected group(s) are treated less favourably or are overrepresented within any of these processes.

- All equality and diversity training is regularly reviewed and updated to ensure it is fit for purpose.
- Reviewing and updating all equality related policies and authoring new policies as required.
- Production of equality and human rights section for the Trusts annual report.

4.3 Equality, Diversity and Inclusion Committee

- i. The Equality, Diversity and Inclusion Committee has responsibility for:
 - Overseeing the development and implementation of the Trusts equality objectives to ensure integration of equality and diversity into mainstream services and corporate functions
 - Undertaking monitoring of progress with all statutory and non-statutory requirements in order to provide assurance to relevant governance committees.

4.4 Individual staff in the Trust

- i. All Trust employees (including contractors and temporary workers) must:
 - Take a personal responsibility to carry out their duties and behave at all times in a way which supports equality, recognises diversity and upholds the human rights of service users, colleagues and visitors to the Trust.
 - Undertake relevant training and development to ensure they are kept up to date with equality, diversity and human rights legislation and best practice.
 - Be aware that unlawful discrimination on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation illegal and could result in legal proceedings against the Trust and/or against the individual.
 - Be aware they have a duty to report any unlawful discrimination or suspected discrimination occurring within the Trust whether by colleagues, service users, visitors or contractors. Help and advice is available from their line manager, Equality and Inclusion Lead, HR business partner/advisor or Trade Union representative (for those members of staff who are members of a Trade Union).
 - Enable the Trust to meet its statutory duties by completing Opportunities Monitoring forms when requested.

5 Main Body of Policy

5.1 Public sector equality duties:

- i. The public sector equality duty consists of a **general** equality duty, which is set out in section 149 of the Equality Act 2010 itself, and the **specific** duties which came into law on the 10th September 2011.
- ii. **Those subject to the general equality duty must, in the exercise of their functions, 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.

iii. **The specific duties require public bodies to:**

- Publish information to show their compliance with the Equality Duty, at least annually; and
- Identify and publish equality objectives, at least every four years.
- All information must be published in a way that makes it easy for people to access it.

5.2 **Equality Impact Assessments**

- In order to meet the general duties under the Equality Act all policies, functions, service changes or reconfigurations and cost improvement initiatives must have an Equality Impact Assessment (EIA) completed as early as possible during the planning stage. Retrospective EIA's are unlikely to demonstrate due regard to the aims of the duty at the point when decisions were being made, and could leave the Trust open to legal challenge.
- An EIA is a way of identifying any potential discrimination (direct or indirect) at the earliest possible stages of the planning process and enables action to be taken to eliminate discrimination at the earliest possible opportunity.
- The assessment is systematic analysis of the impact of policies, functions, service changes or reconfigurations and cost improvement initiatives on people from each of the groups given protection from discrimination by the Equality Act 2010.
- A thorough assessment should involve the use of all available equality information, and wherever possible the results of engagement with all relevant groups e.g. service users, staff, carers and visitors in order to fully understand the impact on individuals from each of the protected groups.
- In addition to identifying any potential negative impacts, the EIA is also a useful tool in identifying areas of good practice in the Trust.

5.3 **Duty to make 'reasonable adjustments'**

- The Equality Act 2010 places a duty on the Trust to make reasonable adjustments to working arrangements, physical features of the premises or services which may place a disabled employee, applicant or service user at a substantial disadvantage (in comparison to non-disabled individuals); this is to help disabled people to overcome the practical effects of their disability wherever possible.
- The duty does not arise if the Trust is not aware (or could not reasonably be expected to know) that a disabled person has a disability and is therefore likely to be substantially disadvantaged, compared to non-disabled individuals.
- Examples of 'reasonable adjustments' could include:
 - Flexible working
 - Changes to working pattern/shift patterns

- Changes to working environment (structural or physical)
 - Redeployment to a more suitable available post in the Trust
 - Provision of specialist equipment
- iv. This list is not exhaustive, and advice relating to making reasonable adjustments for employees can be obtained from HR Advisors, Occupational Health Service and the Trust's Health and Safety Advisor and for service users or carers the Trust's specialist disability advisor or the Trust's Health and Safety advisor.
- v. Where the duty applies, the Trust may be able to justify not making the adjustment on the basis that:
- It was not reasonable or practicable to do so, due to costs, disruption to activities, etc. It is important to note, that if using 'cost' as justification for not making a reasonable adjustment, the financial position of the whole organisation is taken into consideration and not an individual area or department.
 - The only reasonable adjustment that could have been made would not have made a difference i.e. the individual would still remain disadvantaged.

5.4 Patients and services

- i. Patients, their relatives or carers should be treated with dignity respect and due consideration at all times.
- ii. Patients should be afforded healthcare in a consistent and non-discriminatory manner, regardless of their possession of one or more protected characteristic(s).
- iii. To ensure equality of access for all our patients, patient access to Trust services, healthcare arrangements or Trust buildings (estate) will be subject to any reasonable adjustments necessary, or appropriate to meet the needs of patients who have a disability. All NHS organisations are legally required to follow the Accessible Information Standard. The Standard sets out a specific, consistent approach to identifying, recording, flagging, sharing and meeting the information and communication support needs of patients, service users, carers and parents with a disability, impairment or sensory loss.
- iv. Religious, belief, status (asylum seeker or refugee) and cultural needs will be considered when planning a patients' care where necessary.
- v. Patients whose first language is not English should be identified at the time of booking their first appointment, and relevant interpreters arranged, patient information will be provided in the appropriate format.
- vi. Any patient who considers they have been the victim of discrimination from another service user, carer, relative or a member of staff should be encouraged to address their issue through the Trusts' Violence and Aggression Policy or the Trusts Complaints procedure.
- vii. All booking and scheduling staff and clinical staff are responsible for making reasonable efforts to obtain equality information from patients, or if appropriate from

the relatives or carers at the earliest possible point of patient access to the Trusts services.

5.5 Recruitment, selection and promotion of staff

- i. The Trust will ensure that its recruitment, selection and promotion practices provide equal access/opportunities for all persons and are free from unfair or unlawful forms of discrimination.
- ii. No advertisement placed on behalf of the Trust will contain wording which implies there are restrictions upon eligibility to apply for employment in the Trust except in instance where a Genuine Occupational Requirement/General Occupational Qualification applies (see glossary – Appendix 1).
- iii. Job applicants or employees shall receive no less favourable treatment on the grounds of their age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation.
- iv. The Trust Strategic ambitions outline the need to be more representative of the local population we serve. The Trust will achieve this through pre-employment programmes and internal talent schemes to engage and promote individuals with protected characteristics, with a specific focus on race.
- v. Disability Confident Accreditation replaced the ‘two ticks, positive about disability scheme in 2016. The accreditation has 3 levels: Disability Confident – Committed, Confident and Leader status.
- vi. Currently, the Trust is a level 2 Disability Confident Employer. This means the Trust is committed to improving employment opportunities and career development for disabled people and has committed to undertake the following actions:
 - Actively looking to attract and retain disabled individuals
 - Providing fully inclusive and accessible recruitment and selection processes
 - Offering an interview to disabled people who meet the minimum essential criteria for any post
 - Flexibility when assessing people so that disabled job applicants have the best opportunity to demonstrate that they can do the job
 - Proactively offering and making reasonable adjustments as required
 - Encouraging our suppliers and partner organisations to become Disability Confident Employers
 - Promoting a culture of being Disability Confident
 - Ensuring employees have appropriate disability awareness
 - Supporting employees to manage their disabilities or health conditions
 - Ensuring managers are aware of how they can support staff who are sick or absent from work
 - Valuing and listening to feedback from disabled people
- vii. Members of staff involved in recruitment and selection activities must be up to date with their Equality and Diversity training.

- viii. All managers with recruitment and selection responsibilities must have undertaken training in recruitment and selection provided by the Trust, which includes sections relating to equal opportunities throughout the recruitment and selection process.

5.6 Training and Development

- i. All employees will be given equal opportunity and encouragement to progress and have equal access to learning and development opportunities within the Trust and externally, in order that they achieve their full potential.
- ii. All employees of the Trust are required to complete mandatory Equality and Human Rights training as part of their corporate induction, within two months of commencing employment in the Trust and every 3 years thereafter.
- iii. All employees should have access to a personal development review (PDR) at least annually. New starters in the Trust and existing Trust staff moving to a new post should have access to a PDR within 3 months of commencing in their new role.
- iv. Any changes in equality or human rights legislation will be communicated to all staff when required to ensure they are up to date with the latest practice.
- v. Reasonable adjustments will be made to ensure that employees with disabilities (including learning disabilities) have the same access to opportunities as those members of staff who do not have a disability.

5.7 Service delivery – public and patient involvement

- i. The Trust will ensure that its services are non-discriminatory, enabling equality of access and provision and meet the requirements of the general and specific duties of the Equality Act 2010.
- ii. The Trust will ensure that priorities are influenced and set by the health needs of our local communities, and health inequalities are narrowed by seeking views of the community and working cohesively with our local commissioners, HealthWatch groups and commissioning support unit to identify and work towards improving health inequalities.
- iii. The Trust will actively engage with all our local communities in order to give them the opportunity to help influence and shape the services we offer.
- iv. The Trust will complete the annual NHS monitoring requirements of the Equality Delivery System (EDS).

5.8 Complaints of unlawful discrimination

- i. The Trust will not tolerate any form of unlawful discrimination or harassment and will investigate all complaints of discrimination including any instances of bullying, victimisation or harassment that occur on social media e.g. Facebook, Twitter, Instagram. This is whether the alleged discriminator is an employee, service user, carer/relative, contractor or volunteer in the Trust.

- ii. The Trust will ensure that all complaints are dealt with sensitively, confidentially, thoroughly and in a timely manner in line with the Trust Policy for the Management of Concerns and Complaints.
- iii. Any member of staff who considers they have been the victim of discrimination from a service user, carer, relative or another member of staff may pursue the matter through the Trusts Violence and Aggression Policy.
- iv. Any job applicant, who considers they have been unfairly treated or discriminated against in the operation of the Trust's recruitment and selection procedures should be encouraged to initiate a formal complaint, which will then be dealt with through the Trust's Policy for the Management of Concerns and Complaints.

5.9 Harassment at work

- i. The Trust is committed to ensuring that all staff enjoy their working environment and upholds the right of the individual to be treated with consideration, dignity and respect. Harassment at work in any form is unacceptable and may in certain circumstances be unlawful.
- ii. The Trust takes its duty to protect staff from harassment seriously, and will take action whether the harassment is from colleagues, service users, carers or visitors. Any member of staff who believes they have been harassed should take action as described in the Trust's Violence and Aggression Policy or the Resolution Policy.

5.10 Procurement

- i. As a major procurement organisation, the Trust will encourage best practice and non-discriminatory principles from within its existing and prospective supplier base. This will form, where appropriate, part of the Trusts formal contractual arrangements and obligations with suppliers.
- ii. Private and honorary contractors employed by the Trust in any activity (for example; suppliers of goods or services, researchers) will be required to fully comply with the Trusts Equality and Human Rights Policy when on any of the Trust sites or if conducting business or activity on behalf of the Trust elsewhere.

5.11 Modern Day Slavery

- i. Modern slavery is the recruitment, movement, harbouring or receiving of children, women or men through the use of force, coercion, abuse of vulnerability, deception or other means for the purpose of exploitation. Individuals may be trafficked into, out of or within the UK, and they may be trafficked for a number of reasons including sexual exploitation, forced labour, domestic servitude and organ harvesting.
- ii. Liverpool Women's Foundation Hospital Trust fully supports the Government's objectives to eradicate modern slavery and human trafficking and recognises the significant role the NHS has to play. We are strongly committed to ensuring our supply chains and operational activities are free from ethical and labour standards abuses. [Click here for Modern Slavery Act 2015](#)

5.12 Monitoring

- i. Gender Pay Gap Reporting: an annual equality measure required by the Government that shows the difference in average earnings between women and men. This is completed annually via a report format and an annual action plan.
- ii. Workforce Race Equality Standard (WRES): annual reporting is a requirement for NHS organisations. NHS providers are expected to show progress against a number of indicators of workforce equality, which enables the comparison of racially minoritised staff and white staff. This is completed annually via a report format and an annual action plan. The metrics that are measured include; total percentage of staff from racially minoritised groups, recruitment, disciplinary, career progression, non-mandatory training opportunities, discrimination, harassment bullying and abuse, and board member representation.
- iii. Workforce Disability Equality Standard (WDES): annual reporting is a requirement for NHS organisations. NHS providers are expected to show progress against a number of indicators of workforce equality, which enables the comparison of disabled staff and non-disabled staff. This is completed annually via a report format and an annual action plan. The metrics that are measured include; total percentage of staff who report having a disability, recruitment, capability, career progression, harassment bullying and abuse, reasonable adjustment have been made, and board member representation.
- iv. Equality Delivery System (EDS): an annual reporting system that helps NHS organisations improve the services they provide for their local communities and provide better working environments, free of discrimination, for those who work in the NHS, while meeting the requirements of the Equality Act 2010.
- v. Equality Objectives: These are agreed as an NHS organisation as part of fulfilling the public sector requirements of the Equality Act. Progress against the Equality Objectives and Strategic ambitions in relation to Equality are monitored regularly through the Trusts Equality, Diversity and Inclusion Committee.

6 Key Reference

- i. Equality Act 2010
- ii. Human Rights in Healthcare – A framework for local action, DH October 2008.
- iii. Human Rights in Healthcare – a short introduction, DH October 2008
- iv. Mental Capacity Act 2005
- v. NHS Constitution
- vi. European Convention of Human Rights

7 Associated Documents

- i. Trust Strategy
- ii. Violence and Aggression Policy
- iii. Resolution Policy
- iv. Recruitment and Selection Policy
- v. Standard Operating Procedure for carrying out Equality Impact Assessments
- vi. Stress Policy

- vii. New and expectant mothers' policy
- viii. Transgender employment policy
- ix. Performance, development, review and reward policy
- x. Policy for the Management of Concerns and Complaints
- xi. Policy for the use of interpreters
- xii. Patient information policy

8 Training

- i. All staff will be required to complete Equality and Human Rights basic awareness training within 2 months of commencing employment in the Trust, and every three years thereafter. This training is available bi-monthly at the Trusts Corporate Induction, and as an E-learning package on the National Learning Management System (NLMS), access to the online training requires a password which can be obtained from the Trust librarian, or via the Learning and Development Team.

9 Policy Administration

9.1 Consultation, Communication and Implementation

| Consultation Required | Authorised By | Date Authorised | Comments |
|--|---------------------|-----------------|-------------------|
| Impact Assessment | PGP | Oct 22 | |
| GDPR | PGP | Oct 22 | |
| Have the relevant details of the 2010 Bribery Act been considered in the drafting of this policy to minimise as far as reasonably practicable the potential for bribery? | Yes ✓ | | No |
| External Stakeholders | | | |
| Trust Staff Consultation via Intranet | Start date: Sept 22 | | End Date: Sept 22 |

| Describe the Implementation Plan for the Policy (and guideline if impacts upon policy) (Considerations include; launch event, awareness sessions, communication / training via CBU's and other management structures, etc) | By Whom will this be Delivered? |
|---|---------------------------------|
| Policy will be uploaded to the Intranet and communicated to staff via Meditech Bulletin Board and 'Staff Track' | Equality & Diversity Advisor |

Version History

| Date | Version | Author Name and Designation | Summary of Main Changes |
|-------------|---------|--|---|
| August 2022 | 3.0 | Lisa Shoko, Equality and Inclusion Manager | Policy has been updated to include the Modern-Day Slavery Act 2015 and the new Equality Impact Assessment form designed to make the approach to EIAs more robust. Renewal date also amended. |
| Nov 2017 | 2.0 | Cheryl Farmer, Equality and Human Rights Manager | Policy has been updated to reflect current best practice and includes additional information on the Disability Confident Accreditation, WRES, FREDA principles and Accessible Information standard. |
| June 2014 | 1.0 | Cheryl Farmer, Equality and Human Rights Manager | New policy. |

9.2 Monitoring Compliance with the Policy

| Describe Key Performance Indicators (KPIs) | Target | How will the KPI be Monitored? | Which Committee will Monitor this KPI? | Frequency of Review | Lead |
|---|--------|--------------------------------|---|---------------------|--|
| All new staff access Equality and Human Rights basic awareness training within 2 months of being in post. | 100% | Audit | Equality, Diversity & Inclusion or Education Governance | Annually | L&D Manager / Equality & Inclusion Manager |
| All stages of the recruitment and selection process to be monitored by protected characteristic to identify if any particular group(s) fail to progress through this process. | 100% | Audit | Putting People First | Annually | HR Advisor / Equality & inclusion Manager |
| Formal HR processes to be monitored by protected characteristic to identify if any particular group(s) invoke the formal processes more frequently than others. | 100% | Audit | Putting People First | Annually | HR Advisor / Equality & inclusion Manager |

9.3 Performance Management of the Policy

| Who is Responsible for Producing Action Plans if KPIs are Not Met? | Which Committee Will Monitor These Action Plans? | Frequency of Review (To be agreed by Committee) |
|--|--|---|
| Equality & Inclusion Managers | Putting People First Committee | Annually |

10 Appendices

10.1 Appendix 1 Glossary

1. **Equality** is about creating a fairer society in which everyone has the opportunity to fulfil their potential.
2. **Diversity** is about recognising and valuing difference in its broadest sense.
3. **Human Rights** are about our basic needs/rights as human beings. They belong to everyone equally and protect an individual's freedom to control their day-to-day life, and participate in all aspects of public life in a fair and equal way.
4. **Discrimination** is about people being thought of as having different worth or value, being treated differently (less favourably) or given fewer opportunities because they are in possession of one or more protected characteristic(s).
 - 4.1. **Direct discrimination** treating someone less favourably **because** they have one or more protected characteristics.
 - 4.2. **Indirect discrimination** is discrimination by means of rules, regulations or procedures that may appear to be neutral, but which actually discriminate against certain groups of people.
 - 4.3. **Associative discrimination** occurs when someone is treated less favourably because of their **association** with a person(s) in possession of a protected characteristic.
 - 4.4. **Perceptive discrimination** occurs when someone is treated less favourably because you **perceive or assume** they have a protected characteristic.
5. **Positive action** is a range of lawful actions that seek to address an imbalance in employment opportunities among specific groups that have previously experienced disadvantage or that are underrepresented in the workplace.
6. **Harassment** is unwanted conduct on the grounds of age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex or sexual orientation which has the purpose or effect of either violating a persons' dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.
7. **Protected characteristics** The Equality Act 2010 introduced the term "protected characteristics" to refer to groups that are protected from discrimination under the provisions of the Equality Act 2010. These are listed below:
 - 7.1. **Age:** refers to a person or persons belonging to a particular age group. An age group includes people of the same age and people of a particular range of ages. Where people fall in the same age group they share the protected characteristic of age. Protection only applies to people aged 18 years of age and above.

7.2. **Disability:** as defined by the Equality Act 2010, a person has a disability if they have a physical or mental impairment and the impairment has a substantial and long-term adverse effect on their ability to perform normal day-to-day activities. For the purposes of the Act, these words have the following meanings:

7.2.1. **'substantial'** means more than minor or trivial.

7.2.2. **'long-term'** means that the effect of the impairment has lasted or is likely to last for at least twelve months (there are special rules covering recurring or fluctuating conditions).

7.2.3. **'normal day-to-day activities'** includes everyday things like eating, washing, walking and going shopping.

7.3. **Gender reassignment:** This is defined for the purpose of the Act as where a person has proposed, started or completed a process to change his or her sex.

7.4. **Marriage or civil partnership:** This refers to people who have the common characteristic of being married or of being civil partners.

7.5. **Pregnancy and maternity:**

7.5.1. **Pregnancy** is the condition of being pregnant or expecting a baby.

7.5.2. **Maternity** refers to the period after the birth, which in the employment context refers to maternity leave. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth. This includes treating a woman unfavourably because she is breastfeeding.

There is no change to Pregnancy and Maternity under the new act. A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any statutory maternity leave to which she is entitled.

7.6. **Race:** for the purpose of the Equality Act 'race' includes colour, nationality and ethnic or national origins.

People who have or share characteristics of colour, nationality or ethnic or national origins can be described as belonging to a particular racial group.

7.7. **Religion or Belief:** This covers people with religious or philosophical beliefs. To be considered a religion within the meaning of the Act, it must have a clear structure and belief system. The Act contains the following examples of 'religions': The Baha'i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism.

To be considered a philosophical belief for the purposes of the Act, it must be: genuinely held; be a belief and not an opinion or viewpoint; be a belief as to 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, compatible with human dignity and not conflict with the fundamental rights of others.

7.8. **Sex:** For the purposes of the Act, sex means being a man or a woman.

7.9. **Sexual Orientation:** This is defined in the Act as a person's sexual orientation towards:

7.9.1. people of the same sex as him or her (in other words the person is a gay man or a lesbian)

7.9.2. people of the opposite sex from him or her (the person is heterosexual)

7.9.3. people of both sexes (the person is bisexual)

8. **Human Rights** The Human Rights Act (HRA) was introduced in 1998 and is a comprehensive legal framework which sets out the legal obligations of public authorities in relation to Human Rights. The Act obliges public authorities to treat people in accordance with their Human Rights (as set out in the European Convention of Human Rights).

8.1. **FREDA principles** are freedom, respect, equality, dignity and autonomy.

8.2. Human Rights are about the relationship between the state and individuals and are basic standards below which the state must not fall, and in some cases must also protect and fulfil the rights in the HRA, seek to express key principles and values such as dignity, freedom, democracy and equality.

8.3. Human Rights belong to everyone – and are part of what it means to be human.

8.4. Human Rights cannot be taken away, but can be limited or restricted in certain cases.

8.5. **There are three types of Human Rights:**

8.5.1. **Absolute Rights** – which cannot be altered or amended in any way.

8.5.2. **Limited Rights** - can be limited in specific and finite ways (particularly if the interference is based on a breach of law).

8.5.3. **Qualified Rights** can be limited in a wider range of circumstances than limited rights, and are the majority of rights in the Human Rights Act. This is because the protection of qualified rights can sometimes affect the rights of others. Often qualified on a 'case to case' basis.

9. Positive Action

- 9.1. A term used in the context of UK employment law which, unlike positive discrimination, is generally allowed by legislation: employers can offer disadvantaged groups access to facilities for training and encourage job applications from under-represented groups, but cannot discriminate in selecting candidates for employment or promotion or the terms and conditions on which they are employed.
- 9.2. The Advisory, Conciliation and Arbitration Service (ACAS) provides examples of permitted positive action, including placing advertisements where they are more likely to be seen by the members of a disadvantaged group, encouraging applications from particular protected groups who may be underrepresented in the workforce, employers must ensure that before committing to positive action they have evidence to show that the targeted group is under-represented within the workforce or is likely to have a particular disadvantage in taking up or doing that type of work.

10. Genuine Occupational Requirement (GOR)/Genuine Occupational Qualification (GOQ)

- 10.1. A term used in the context of discrimination legislation relating to sex, race, religion or belief, age and sexual orientation, where an employer is allowed to 'discriminate' in recruitment, transfers, training or dismissal, if the employer can prove that a genuine occupational requirement (GOR) or, in the case of sex or race, genuine occupational qualification (GOQ) exists.
- 10.2. This limited defence applies where the nature of the role makes it unsuitable for individuals with particular characteristics. For example, the GOQ defence may be available where the essential nature of a job requires that it be carried out by a person of a particular sex—e.g., jobs that involve physical contact, and issues of decency or privacy arise. Similarly, under the Race Relations Act, an employer may justify employing only individuals of a particular racial background for the purposes of "authenticity" in a particular setting, such as a restaurant—e.g., Ethiopian or Indian restaurants.
- 10.3. However, there are very strict conditions that must be met for this defence, and the employer has the burden of proving the need to discriminate. The discriminatory characteristic must be a genuine and determining requirement of the job; it must be proportionate to apply that requirement in the particular case, and either the prospective employee must not meet the requirement or the employer must be satisfied that the person does not meet it. Employers must also ensure that before committing to positive action they have evidence to show that the targeted group is under-represented within the workforce or is likely to have a particular disadvantage in taking up or doing that type of work.

11. Workforce Race Equality Scheme (WRES) and Workforce Disability Equality Standard (WDES)

- 11.1. All NHS organisations are required to demonstrate how they are addressing race and disability equality issues in a range of staffing areas. The Workforce

Race Equality Standard (WRES) and Workforce Disability Equality Standard (WDES) will help organisations to achieve this.

11.2. All NHS organisations will be required to demonstrate through the nationally agreed metrics how they are addressing race and disability equality issues in a range of staffing areas.

11.3. More details can be found at:

[NHS England » NHS Workforce Race Equality Standard](#)

[NHS England » Workforce Disability Equality Standard](#)

10.2 Appendix 2 - A Human Rights Based approach to healthcare

The Human Rights Act 1998 came into force in October 2000 and incorporates most of the rights protected under the European Convention on Human Rights (ECHR). It must be considered in all UK courts, including mental health review tribunals. Public authorities, which include National Health Service (NHS) bodies, have a duty to take steps to protect ('positive obligations') the human rights of individuals.

Avoiding violation of the ECHR could be construed as a negative approach towards these civil and political rights. A more constructive endeavour is to embed human rights values within the culture of the organisation. In this way subsequent policy and decision-making is framed around such values. However, more recently a coordinated approach can be discerned in healthcare, which adopts a human rights-based approach. This approach to healthcare is based on the premise that ignoring or violating a person's human rights has a detrimental effect on their health and, conversely, using this approach can improve health outcomes and deliver better quality, 'person-centred' healthcare.

The Department of Health has identified five key aims of a human rights-based approach to healthcare:

1. Putting human rights principles and standards at the heart of policy and planning;
2. Empowering staff and patients with knowledge, skills and organisational leadership and commitment to achieve a human rights-based approach;
3. Enabling meaningful involvement and participation of all key stakeholders;
4. Ensuring clear accountability throughout the organisation;
5. Non-discrimination and attention to vulnerable groups.

The FREDA principles

In essence, the human rights-based approach is the process by which human rights can be protected in clinical and organisational practice by adherence to the underlying core values of **fairness, respect, equality, dignity and autonomy (FREDA)**.

A human rights-based approach essentially involves all five values being brought to bear on a particular issue. These principles are used to **inform** decisions, **not** to determine them. All of the principles must inform each decision, but the weight given to each principle in reaching a particular conclusion will depend on the issues under consideration. It may be the case that in making some decisions a greater weight should be given to some of the principles over others. That is not to say that in making a decision any of the principles should be disregarded.

Fairness

This principle demands that due consideration is afforded to the person's opinion, giving them the opportunity to have that point of view expressed, listened to and weighed, alongside other factors relevant to the decision to be taken. The process should also be free of arbitrary considerations, thereby imparting a degree of certainty to the process and allowing others to determine how they might be treated in similar circumstances. There is

also a link with the principle of equality (see later) in ensuring that the decision-making is free of discriminatory practices.

Respect

Respect is the objective, unbiased consideration and regard for the rights, values, beliefs and property of other people. Respect applies to the person as well as their value systems and implies that these are fully considered before decisions which may overrule them are taken. Respect is construed from the actions shown to an individual by others and can be demonstrated by courteous communication, which imbues the person with a sense of being valued through taking time to get to know them as individuals, not as 'numbers' or 'conditions': person-centred care.

Organisational bureaucracy and administrative burdens can act as powerful obstacles to achieving this.

Equality

The many facets to expressing the principle of equality, including non-discrimination, overlap with respect. The NHS itself was founded on the principle of equality: equity of access and equity of treatment. Moreover, the NHS Constitution lists equality first among the seven key principles that guide the NHS. Differences in clinical need have to be determined through procedures that remove arbitrariness from the decision-making process.

Dignity

Dignity has been defined as 'a state, quality or manner worthy of esteem or respect; and (by extension) self-respect. Dignity in care, therefore, means the kind of care, in any setting, which supports and promotes, and does not undermine, a person's self-respect regardless of any difference'. By extrapolation, dignity can be regarded as arising from a dynamic between a person's own sense of worth and the manner in which others treat them.

Adherence to the principle of dignity requires that each person is treated as a human being with due consideration given to their prevailing circumstances. By this criterion the person's level of consciousness is immaterial and the principle of dignity must be upheld even after death, for example, by having proper procedures in place to regulate the retention of human tissue after a post-mortem.

Autonomy

Autonomy is regarded as one of the four fundamental ethical principles of healthcare. It is the principle of self-determination whereby a person is allowed to make free choices about what happens to them, that is, the freedom to act and the freedom to decide, based on clear, sufficient and relevant information and opportunities to participate in the decision-making processes.

In clinical practice it is well recognised that a person's capacity to make decisions may be absent or compromised temporarily. The Mental Capacity Act 2005 permits a person to stipulate, while they have capacity, their future wishes regarding their healthcare (as well as matters regarding their property and affairs) in anticipation of a time when they will no longer have capacity. Such advance decisions allow a person to refuse certain treatments, including life-sustaining treatment, and so are vehicles whereby a degree of autonomy can

survive the loss of capacity. Even in the absence of capacity, healthcare professionals should strive to ensure the person participates in the decision-making process as much as reasonably practicable.

10.3 Appendix 3 List of Human Rights

1. Obligation to respect human rights
2. Right to life
3. Right not to be tortured or treated in an inhuman or degrading way
4. Right to be free from slavery and forced labour
5. Right to liberty and security
6. Right to a fair trial
7. Right not to be punished for something that wasn't against the law
8. Right to respect for private and family life, home and correspondence
9. Right to freedom of thought, conscience and religion
10. Right to freedom of expression
11. Right to freedom of assembly and association
12. Right to marry and found a family
13. Right not to be discriminated against in relation to any of the other rights contained in the European convention

Article 1, Protocol 1 - Right to peaceful enjoyment of possessions

Article 2, Protocol 1 - Right to education

Article 3, Protocol 1 - Right to free elections

Article 1, protocol 13 - Abolition of the death penalty

10.4 Appendix 4 - Human Rights relevant to Healthcare

Article 2 – Right to Life

The ‘right to life’ is an absolute right, and it imposes three types of obligations on the state:

- A duty not to take away anyone’s life (apart from in certain limited circumstances)
- A positive duty to take reasonable steps to protect life
- A procedural duty to investigate deaths where the state may be implicated/involved (e.g., Deaths in prisons or hospitals) *it was this obligation was used by families and lawyers involved in the Mid Staffs enquiry.

Examples of breaches of Article 2 could include:

- Deaths through neglect or negligence
- Failing to investigate suspicious deaths
- Refusing to give life-saving treatment to someone because of their age.

Article 3 – the Right to be free from torture, inhumane or degrading treatment. An absolute right – which means this right cannot be breached under any circumstances;

Torture:

Must be very severe treatment

The state has a positive obligation to protect against such treatment

Inhumane treatment:

Less severe than torture, but still causes severe mental or physical suffering Does not have to be deliberate

Degrading treatment:

Treatment which grossly humiliates

Designed to produce in the victim feelings of fear, anguish and inferiority

Examples of how Article 3 could be breached include:

- Neglect/carelessness e.g., Bedsores, patients in beds with dirty linen, not aiding patients with food and drink when needed
- Poor conditions in hospitals or care homes
- Washing or dressing patients without regard for their dignity
- Using excessive force to restrain patients
- Authorities failing to protect individuals from abuse
- Malnutrition and dehydration in vulnerable patients, service users.

Article 5 – Right to Liberty

This is a limited right, which means that a person’s right to liberty can be breached in certain, very specific ways such as:

- The lawful detention of someone with mental health issues
- The lawful detention of persons for the spreading of infectious diseases

- The detention of persons who following a fair trial have been found to have committed a crime

In order to detain a patient/service user lawfully:

- A specific mental disorder must be involved and the disorder must be extreme
- Detention includes secure facilities and extreme restriction of movement (e.g. sedation)
- Detention must be lawful and end when the disorder ends
- There must be periodic reviews by a tribunal which has the power to discharge a person

Article 6 – Right to a fair trial

Article 6 – focuses on how decisions are made and helps to open up decision making processes to scrutiny and ensures they are fair.

It applies to:

Criminal proceedings
Civil rights and Obligations
Employment matters

Examples of decisions which require a ‘fair trial’ include:

- Decisions to suspend employees from duties
- Disciplinary procedures
- Confiscation of property/property disputes
- Licensing decisions
- Compensation issues

A ‘fair trial’ includes:

- An independent and impartial tribunal
- Provision for the affected person to be present at some stage during the decision making process
- The right to present their case before the decision is made
- Have the decision made within a reasonable time period
- The right to appeal any decisions made

Article 8 – the Right to private and family life, home and correspondence

This is qualified right – i.e. it can be restricted in certain circumstances, and has to be balanced against the rights of others and the needs of society

The state has a positive obligation to protect this Right.

Family life:

- Includes the right to develop normal family relationships
- Includes the right to ongoing contact if the family is split up (often breached by separating families of asylum seekers)

Private life:

- Includes the right to 'physical and psychological integrity'
- The right to participate in community life
- The right to form and maintain relationships with other people

This is NOT a right to housing, but a right to enjoy the home you already have

Need to remember care homes and hospital wards may also be considered a person's 'home'

Examples of breaches of article 8 include:

- Lack of dignity in respect of personal care needs
- Lack of privacy on wards or in care homes (including the use of inappropriately situated CCTV cameras – situated so as to breach a person's privacy and dignity)
- Refusal to allow family visits or contact when in hospital or residential care
- Inappropriate use of restraint or medication
- Insufficient attention paid to confidentiality – includes written and spoken information e.g. not providing a private area when using an interpreter for a patient whose first language is not English.

11 11 Initial Equality Impact Assessment Screening Tool

| | | |
|--|---|---|
| Name of policy: Equality and Human Rights Policy | Details of policy: This policy sets out how the Trust is committed to promoting equality and human rights in terms of both staff and patients. | |
| Does the proposal, service or document affect one group more or less favourable than another on the basis of: | Yes/No | Justification/evidence and data source |
| Age | No | The content of this policy details how the Trust is committed to promoting equal opportunities for both patients and staff regardless of age, disability, race, gender reassignment, religion or belief, sex, sexual orientation, marriage or civil partnership or pregnancy and maternity and also provides details of the Human Rights Based approach to healthcare implemented by the Trust. |
| Disability: including learning disability, physical, sensory or mental impairment. | No | |
| Gender reassignment | No | |
| Marriage or civil partnership | No | |
| Pregnancy or maternity | No | |
| Race | No | |
| Religion or belief | No | |
| Sex | No | |
| Sexual orientation | No | |
| Human Rights – are there any issues which might affect a person’s human rights? | Justification/evidence and data source | |
| Right to life | No | The content of this policy details how the Trust is committed to promoting equal opportunities for both patients and staff regardless of age, disability, race, gender reassignment, religion or belief, sex, sexual orientation, marriage or civil partnership or pregnancy and maternity and also provides details of the Human Rights Based approach to healthcare implemented by the Trust. |
| Right to freedom from degrading or humiliating treatment | No | |
| Right to privacy or family life | No | |
| Any other of the human rights? | No | |
| EIA carried out by: Lisa Shoko Quality assured by: | Date 31.08.22 | Contact details of person carrying out assessment. |