

Equality and Diversity Policy



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INTRODUCTION

1.1 Purpose

This policy sets out the CCG's commitment and strategy for promoting a diverse and equitable public service and workplace.

As both a public sector organisation providing and commissioning vital services in Brighton & Hove, and as an employer, the CCG is firmly committed to upholding equality, diversity and human rights in all its activities.

The CCG appreciates the value of diversity, and the benefits it brings to the organisation, local community and healthcare economy. As part of its responsibilities in supporting that diversity, it acknowledges that people have different needs within the workplace and healthcare environments, and recognises the detrimental impact that discrimination and inequalities can have upon different individuals and groups represented within its patients and staff.

1.1.1 The aims and objectives of the CCG in setting out this policy are as follows:

Building, supporting and maintaining a diverse and representative workforce – implementing the recruitment and retention of staff that bring the strengths of our community's diversity to the work that we do.

Creating a working environment where all staff can feel confident and supported to thrive. Maximising the potential and productivity of teams and individuals across the organisation by promoting equality of opportunity; addressing inequalities where they may arise and eliminating discrimination.

Setting out how the first principle of the NHS constitution is put into effect in the services the CCG commissions and delivers: 'The NHS provides a comprehensive service, available to all irrespective of Sex, race, disability, age, sexual orientation, religion, belief, Sex reassignment, pregnancy and maternity or marital or civil partnership status...' (Department of Health 2013)

Promoting equality of opportunity for people who use services provided and commissioned by the CCG to minimise health inequalities and meet the health needs of all parts of the community.

Providing staff with coherent point of reference and framework within which to work in upholding the values of the CCG whilst meeting their legal obligations and that of the organisation.

- a. Setting out procedures to support staff to meet the duties to avoid prohibited conduct and discrimination placed upon the CCG by the Equality Act 2010.
- b. Supporting staff to meet the CCG's duties to make reasonable adjustments and the proactive public sector equality duty (PSED).
- c. Provisions for positive actions to address evidence of disadvantage,

differential needs and disproportionately low participation amongst certain protected groups in society.

- d. Supporting staff to act compatibly with the rights contained in the Human Rights Act (1998) in everything that it does. The CCG takes a values based approach (see Appendix C) to putting human rights into practice based on fairness, respect, equality, dignity and autonomy (FREDA) (Department of Health 2008)

1.2 Scope

This policy is to be applied by all staff within all workplaces and services; clinical and corporate; and has a specific effect in the work context. Specific realms of responsibility are set out in section 1.4.

The policy applies throughout all locations, however where physical adaptations as part of reasonable adjustments to non-CCG owned properties are required, consent of the landlord should be sought first.

The standards for CCG staff and operational procedures which are set out in this policy should also inform expectations of standards in E&D for services commissioned and/or procured by the CCG.

1.3 Definitions

(For definitions of terms set out under the Equality Act 2010 please see Appendix C)

Diversity – Defined as ‘the differences in the values, attitudes, cultural perspectives, beliefs, ethnic backgrounds, sexual orientation, skills, knowledge, and life experiences of each individual in any group of people.’

Equality – The term used to describe systems, policies and practices that tackle inequalities, aiming to ensure that all staff are treated fairly, and that service users do not experience discrimination.

Due Regard - To ‘have due regard’ means that in making decisions, and in its other day-to-day activities a body subject to the Public Sector Equality Duty, must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations in a proportionate manner.

1.4 Discrimination

a) Direct Discrimination - A person discriminates against another if they treat a person, (because of a protected characteristic), less favourably than they would treat others. For instance making jokes at the expense of someone’s sexual orientation or faith.

b) Indirect Discrimination – A person discriminates against another if they apply a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic. For example if something is applied universally, but its practical effect disproportionately disadvantages one or more specific groups. For instance having an inflexible dress code or uniform policy that prohibits people wearing headwear, could potentially disadvantage certain religious groups if this is a requirement of their religion.

c) Associative Discrimination – This is direct discrimination against someone because they associate with another person who possesses a protected characteristic. For instance deciding someone is unable to do a job because of their caring responsibilities for someone who is disabled.

d) Discrimination Arising from Disability – This occurs when a disabled person is treated unfavourably because of something connected with their disability and the unfavourable treatment cannot be justified (i.e. it can be demonstrated to be the least discriminatory way of delivering a service, policy or procedure). For example a parent seeks admission to a crèche for their child who has a disability which means that they do not have full bowel control. The crèche says that they cannot admit the child because they are not toilet trained and the children at the crèche are required to be. The refusal to admit the child is not because of the disability itself; but due to experiencing detrimental treatment as a consequence of their incontinence.

e) Perceptive Discrimination - This is direct discrimination against an individual because others think they possess a particular protected characteristic. It applies even if the person does not actually possess that protected characteristic.

1.5 Harassment

a) Harassment – This takes place where, for a reason that relates to person's protected characteristic, the harasser engages in unwanted conduct which has the purpose or effect of violating the person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for him/her.

b) Victimisation – Occurs when an employee is punished or treated unfavourably as a result of complaining or supporting a complaint of discrimination/harassment. For example, an employee raises a grievance about disability discrimination and is dismissed as a result.

c) Genuine Occupational Requirement - In limited circumstances it can be lawful for an employer to require a job applicant or worker to have a particular protected characteristic. This requirement has to be both intrinsic to the role, and has to be a proportionate means of achieving a legitimate aim. Within the CCG there are unlikely to be any roles where a Genuine Occupational Requirement can or should be successfully applied, and this should be discussed with HR.

d) Protected Characteristics – as defined by the Equality Act 2010. These are the nine specific areas (protected characteristics) which are covered by equality legislation.

The relevant protected characteristics are:

- a) Age;
- b) Disability;
- c) Sex;
- d) Sex Identity (referred to under the terms of the Equality Act as *Sex Reassignment*);
- e) Marital or Civil Partnership Status (including Same Sex Marriage);
- f) Maternity or Pregnancy Status;

- g) Race;
- h) Religion or Belief;
- i) Sexual Orientation

Note - In terms of Sex it is important to note that non-binary is a term referring to people whose Sex identity is neither male nor female. People who identify as non-binary may or may not also identify as *transSex*. The term *transSex* (Trans) is a term used to describe people whose Sex identity (i.e. the Sex they identify as and live in now) is different from the Sex they were assigned at birth (male or female).

2. ACCOUNTABILITIES AND RESPONSIBILITIES

2.1 Chair and CCG Board will:

- Ensure that equality and human rights is integrated into all CCG business, in both service delivery and in treatment of staff.
- Ensure that Board members are trained appropriately in managing equality and human rights.
- Support Human Resources in addressing those areas identified from equality action plans that require improvement.

2.2 The Chief Accountable Officer will:

- Ensure that the CCG applies the principles of managing equality and human rights to all its operations and demonstrate a commitment to the advancement and safeguarding of equality and human rights.
- Ensure that the commitment from the CCG to managing equality and human rights is communicated to all workers of the CCG.
- Lead by example, developing and promoting an organisational culture that is supportive of the benefits of practically delivering improvements in equality and human rights

2.3 Managers will:

- Ensure that the contents of this policy are communicated to all existing staff, and to new staff on their commencement
- Promote a professional and positive work environment, and in doing so ensure and promote workers' rights to work with dignity
- Raising awareness of promoting equality and human rights and the principles, acting as a role model for others, and developing personal skills in order to handle issues relating to discrimination, harassment or other behaviours prohibited by the Equality Act 2010.
- Directly working with individuals to prevent harassment and discrimination in their work area, and ensuring that any issues arising are managed in accordance with the CCG procedures
- Ensure that their staff know how to report in the event that they experience bullying or harassment or become aware of bullying and harassment in the workplace
- Ensure that the development and delivery of services appropriately includes the views of people who use services and carers and that equality analyses and access audits are carried out and outcomes are monitored locally and any patterns of inequality are both addressed and reported.
- Provide leadership in challenging discriminatory behaviours in the workplace

2.4 Recruiting managers will:

Work with the chair of an interview panel to ensure that all members of the selection panel have completed the Equality and Diversity Training before they sit on a selection panel for competency based recruitment.

2.5 All workers will:

- Familiarise themselves with this policy and ensure that their conduct is consistent with its contents and legislation.
- Maintain a professional working environment, treating colleagues, people who use services, volunteers and carers with respect and have a responsibility to ensure that their practices promote and safeguard equality of opportunity and human rights.
- Complying with and promoting CCG policies and procedures with regard to managing diversity, and appropriately using CCG policies and procedures to raise any concerns related to equality and human rights
- Inform their line manager, the Human Resources department and or Trade Union representative if they think that unlawful discrimination may be taking place

Legal Liability of the CCG

Individual members of staff can be held personally liable for acts of unlawful discrimination.

The CCG as an employer may be liable for any unlawful discrimination committed by its staff during the course of their employment, unless it can be proved that all reasonable and practicable steps had been taken to prevent such an act from occurring. The CCG has a primary legal and moral responsibility for ensuring that discrimination does not occur.

3. POLICY AND PROCEDURES

3.1 Handling discrimination and prohibited conduct at work

The CCG supports representative workplaces in which all processes are transparent, opportunities are based on merit, rewards are fair and equitable and in which staff members are engaged and free of discrimination.

The bans on discrimination and victimisation apply at work and protect people seeking work in: the arrangements made for deciding to whom to offer employment, the terms on which employment is offered, or by not offering employment. They also apply at work to protect employees in: employment terms, the way the CCG affords access (or not) to opportunities for promotion, transfer or training or for receiving any other benefit, facility or service, by dismissal, or by subjecting employees to any other detriment. Similar prohibitions apply in all contract work with the CCG as a principal. Bans on harassment apply to all workers.

The bans on discrimination and harassment apply to all work relationships that have ended, i.e. towards ex-employees / contractors.

There are very limited and narrow exceptions to prohibited conduct at work that are set out in the Equality Act 2010. A general exception is that the CCG is permitted to pay or

provide fewer other benefits, services or facilities to a worker with less service than another worker. This is an exception to age discrimination where the benefit is awarded in relation to service of five years or less. If the length of service exceeds five years, the exception applies only if it reasonably appears to the CCG that the way in which length of service is used to award benefits will fulfil a business need. For example, staff award ceremonies present gifts to workers with long service because the CCG reasonably believes this encourages loyalty, motivation and rewards experience.

3.2 Recruitment and Selection

Recruitment and selection will be undertaken in accordance with the CCG's Recruitment Policy. Reasonable adjustments will be considered for disabled people seeking work at the CCG.

People who seek work at the CCG and feel they have been discriminated within any part of the recruitment and selection process (advertising, job descriptions, person specifications, application forms, interviews, tests, short-listing or appointments) may report this to the recruiting manager or the recruitment team who will arrange for someone appropriate to investigate the matter fairly and respond to the individual.

Recruiting managers will ensure that no job descriptions and person specifications include requirements that are discriminatory.

Staff will ensure wording avoids biased language and age bars / limits are only applied where they are objectively justified or lawful.

The CCG operates a guaranteed interview scheme for disabled job applicants who meet the minimum shortlist criteria through the 'disability positive' scheme (Two Ticks) operated through the Department for Work and Pensions.

All job adverts will feature reference to the CCG's Equality and Diversity Policy and feature the 'Two Ticks' logo.

3.3 Duty to make reasonable adjustments

The duty comprises the following three requirements (for further detailed notes please refer to Appendix B):

- (1) Where a 'provision, criterion or practice' (i.e., hot desking) puts a disabled person at a substantial disadvantage compared to people who are not disabled, you are required to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (2) Where a 'physical feature' puts a disabled person at a substantial disadvantage compared to people who are not disabled, you are required to take such steps as it is reasonable to have to take to avoid the disadvantage.
- (3) Where a disabled person would, but for the provision of an 'auxiliary aid', be put at a substantial disadvantage compared to people who are not disabled, you are required to take such steps as it is reasonable to have to take to provide the auxiliary aid.

3.4 Reasonable adjustments for disabled people seeking work

As an employer the CCG has a duty to make reasonable adjustments for all disabled workers of the CCG and to any disabled applicants for work or a disabled person who is considering applying. The CCG may also have a duty after employment or a contract has ended.

Managers should follow the guidance set out in the CCG's Recruitment and Selection policy and the Equality Act 2010 Employment Statutory Code of Practice (Equality and Human Rights Commission 2011)

Staff will make reasonable adjustments for disabled people who seek work at the CCG within any part of the recruitment and selection process (advertising, job descriptions, person specifications, application forms, interviews, tests, short-listing or appointments etc.) The CCG only has a duty to make an adjustment if it knows, or could reasonably be expected to know, that a disabled person is, or may be, an applicant for work.

There are restrictions on when health or disability-related enquiries can be made prior to making a job offer or including someone in a pool of people to be offered a job. However, questions are permitted to determine whether reasonable adjustments need to be made in relation to an assessment (e.g. a BSL interpreter is required) such as an interview or other process designed to give an indication of a person's suitability for the work concerned (see 'Enquiries about disability and health below')

Recruitment managers and selection panels will not use reasonable adjustments as a reason to not appoint an individual.

Managers must make reasonable adjustments for disabled workers in all parts of their job. For disabled workers the CCG only has a duty to make an adjustment if they know, or could reasonably be expected to know, that a worker has a disability and is, or is likely to be, placed at a substantial disadvantage.

It is advisable to agree any proposed reasonable adjustment with the disabled person in question before they are made. Staff should always consider the steps suggested by an individual disabled person as to whether they would help overcome the substantial disadvantage, and whether they are reasonable. If the 'reasonableness' of any step is unclear, the advice of Human Resources should be sought.

Managers will do all they can reasonably be expected to do to find out whether an individual requires reasonable adjustments (e.g. private routine discussions about health, disability and reasonable adjustments during staff appraisal with managers).

The CCG respects the right to privacy for a disabled person to keep a disability confidential, however if a worker keeps a disability confidential then the CCG will not be under a duty to make a reasonable adjustment, unless it could reasonably be expected to have known.

If a CCG employee (such as a member of HR or line manager) or CCG agent (e.g. a recruitment agent) knows professionally of a worker, job applicant or potential job applicant's disability, the CCG will not usually be able to claim that they did not know of

the disability and that they therefore have no duty to make a reasonable adjustment.

The CCG acknowledges that information about disabled people may come through different channels; there are suitably confidential processes within recruitment subject to the disabled person's consent to bring that information together to make it easier for the CCG to fulfil its duty.

If a manager or worker is unsure about the reasonable adjustment this should be handled through case-specific risk-assessments in partnership with the Occupational Health department.

When making enquiries about disability, staff must consider issues of dignity and privacy and ensure that personal information is dealt with confidentially. Members of staff cannot necessarily expect to be told about why certain reasonable adjustments are being made without the consent of the disabled person concerned.

Managers will not use reasonable adjustments as a reason to penalise or dismiss an individual.

3.4.1 Access to Work Programme

Access to Work is a specialist disability service delivered by Job Centre Plus, which gives practical advice and support to disabled people, whether they are working, self-employed or looking for employment. Access to Work is provided where someone needs support or adaptations beyond the reasonable adjustments that an employer is legally obliged to provide under the Equality Act. (Department for Work and Pensions 2014)

Staff members may access support directly at the earliest possible opportunity (<https://www.gov.uk/access-to-work>) and should first discuss the matter with their manager or supervisor. New starters should, wherever possible, apply to Access to Work within six weeks of starting work at the CCG to minimize costs for the CCG.

Following an assessment by the Access to Work Adviser, the disabled person's manager will be responsible for arranging for the support to be put in place from the options identified and to then claim the grant back from Access to Work.

Access to Work can support disabled people in a number of ways. For example it can provide funds towards:

- Special aids and equipment
- Adaptations to equipment
- Travel to work
- Travel in work
- Communication support at interviews
- A wide variety of support workers, and
- The Mental Health Support Service.

3.5 Occupational Requirements

Occupational requirements are a general exception to unlawful direct discrimination in

Relation to work. They apply where because of the nature or context of the work a post specifies a person must be of a particular sex, race, disability, religion or belief, sexual orientation or age – or not to be a transsexual person, married or a civil partner.

The requirement must not be a sham or pretext, or it could give rise to a claim of unlawful direct discrimination. There must be a link between the requirement and the job, for example a service manager decides that a new therapist post-holder must be female and this is required because her role will be working with female victims of sexual abuse.

Managers who require a post-holder to have a particular occupational requirement must speak to Human Resources for advice and agreement. The recruitment case must follow the guidance set out in the Equality Act 2010 Employment Statutory Code of Practice (Equality and Human Rights Commission 2011). The following conditions must be met in relation to the nature or context of the work, and evidence documented, prior to applying an occupational requirement:

- The requirement is an occupational requirement;
- The application of the requirement is a proportionate means of achieving legitimate aim; and
- The job applicant or worker does not meet the requirement; or,
- Except in the case of sex, the employer has reasonable grounds for not being satisfied that the job applicant or worker meets the requirement.

In relation to whether the occupational requirement is a proportionate means of achieving a legitimate aim, the following considerations as a minimum must always be addressed:

- Do any or all of the duties of the job need to be performed by a person with a particular characteristic?
- Could the employer use the skills of an existing worker with the required protected characteristic to do that aspect of the job?

If all of these conditions are true and then an occupational requirement may be applied in relation to the following circumstances

- The arrangements made for deciding whom to offer employment
- An offer of employment
- The provision of access to opportunities for promotion, transfer, training, or
- Except in relation to sex, dismissals, expulsions and terminations.

The occupational requirement must be clearly identified at the beginning of the recruitment, training or promotion process and be clearly included in all advertising. Recruiting managers must re-assess the job whenever it becomes vacant to ensure that the statutory conditions for applying the occupational requirement exception still apply.

3.6 Positive action

Managers may optionally take positive action measures to improve equality for people who share a protected characteristic where it meets certain conditions and the actions meet a certain test. Managers seeking to take advantage of these must present a business case for approval to the CCG's Senior Management Team that follows the guidance set out in the Equality Act 2010 Statutory Code of Practice Services, public functions and

associations (Equality and Human Rights Commission 2011).

3.6.1 Positive action: general requirements

It is not prohibited for the CCG to use positive action measures when it is reasonably held that:

- (a) People with a protected characteristic suffer a disadvantage connected to that characteristic, or
- (b) People with a protected characteristic have needs that are different from the needs of people without it, or
- (c) Participation in an activity by people who share a protected characteristic is disproportionately low

The action must be a proportionate means of achieving the aim of either:

- (a) Enabling or encouraging people with the protected characteristic to overcome or minimize that disadvantage,
- (b) Meeting those needs, or
- (c) Enabling or encouraging persons with the protected characteristic to participate in that activity

Another example might be where an analysis of workforce revealed under- representation of BME people accessing leadership opportunities, so in response the CCG holds leadership development workshops targeted at BME workers.

Positive action is time-limited since the conditions necessary it to remain lawful may change over time, e.g. as health and the workforce changes over time.

3.6.2 Positive action: recruitment and promotion requirements

Recruiting managers may take a protected characteristic into consideration when deciding whom to recruit or promote, where either:

- (d) People with a protected characteristic suffer a disadvantage connected to that characteristic, or
- (e) Participation in an activity by people with a protected characteristic is disproportionately low

This action can only be taken where the candidates are equally as qualified as each other. The judgement of whether one person is as qualified as another is not just about qualifications, but rather an objective judgement based on the criteria the recruiting manager is using to establish the best candidate for the job. Each case must be considered on its own merits.

Any action taken must be a proportionate means to:

- (a) Overcome or minimize that disadvantage, or

(b) Participate in that activity.

3.7 Harassment

The CCG has an established Dignity in the Workplace Procedure, which outlines the procedure for handling such cases.

This policy reinforces that bullying and harassment at work is unacceptable and that the CCG are committed to providing a working environment that is free from harassment, intimidation and all forms of behavior, which are unacceptable and offensive.

All managers have a responsibility to be familiar with the procedures outlined in the Dignity in the Workplace Procedure and should draw the policy to the attention of all existing and new workers.

All workers have a responsibility for their own behavior in accordance with the Dignity in the Workplace Procedure.

3.8 Accommodating Sex transition in the workplace

The CCG is committed to supporting all its workers with regard to personal circumstances that may impact on work.

Once a worker has decided they wish to undergo Sex reassignment it is essential that a support network be set up as soon as possible to accommodate this. It is for the individual to decide whom to turn to for advice and support, be it their line manager or Human Resources. Once this is decided, the Human Resources Manager or a line manager should be assigned to act as a contact for the individual concerned to answer any queries or action any requirements and offer advice. Once this is done, the appointed advisor will need to discuss with the individual how they wish to handle the transition (stay on in post or voluntary redeployment, any timescales, time off, expectations about any name change, dress, single sex facilities usage, etc.)

Support may also include time away from work (see Special Leave Policy) for outside support networks, any counselling or medical issues; dealing with the reactions of other workers; educating others about the issues involved and confidentiality.

Tran's people have the right to call a halt to the transition process and choose to remain in a more Sex ambiguous identity at any time if they wish.

3.9 Religion and religious observance

Staff members requiring modifications to their working practice or environment in conformance with their religious or philosophical beliefs may request so to their line manager or HR. This could include (but is not limited to): requests for time off; dietary needs; prayer needs; and, clothing. Time off requests will normally be considered from the normal annual leave entitlements.

Upon receiving a request, reasonable options and alternatives will be explored in consultation with the individual staff member and other team members where appropriate.

Where reasonable the CCG will try wherever possible to accommodate staff needs and avoid adverse impact.

3.10 Handling human rights claims

Claims of human rights breaches should be handled and reported by staff in a similar way to handling discrimination and prohibited conduct, except that instead of incidents / concerns / complaints / claims being recorded as discrimination they should be recorded as potential breaches of human rights.

3.11 Enforcement and Redress

Employees who unlawfully discriminate or cause prohibited conduct, or fail to adhere to this policy will be subject to the CCG's Disciplinary Policy. Concerns about agency workers' or contractors' conduct will be reported to their agency or employer. Concerns about bank workers' conduct should be reported to the CCG's HR department.

A disclosure of information, made in the public interest by a worker who has reasonable belief that a relevant failure has occurred, and that qualifies for protection under the Public Interest Disclosure Act 1998, can also be reported as per the CCG's 'Raising Concerns Policy'.

Employees may pursue complaints through the CCG's Grievance Policy. Agency workers or contractors should contact their agency or employer in the first instance if they have any concerns. Bank workers should contact the CCG's HR department. All workers may report harassment through the Dignity and Work Procedure.

Workers will not be discouraged or penalized if they wish to seek advice from their Trade Union, Citizens Advice Bureau (CAB), the Equality Advisory Support Service (EASS), ACAS (Advisory Conciliation and Arbitration Service) or the Equality and Human Rights Commission (EHRC).

4. DISSEMINATION AND IMPLEMENTATION

This policy will be made available on the CCG intranet and internet, and publicized through the Bulletin (the CCG internal electronic newsletter). The policy will be discussed at leadership briefings and team meetings. Staff networks will be asked to discuss and publicize the policy at their meetings.

Training for all staff will be provided to ensure that prejudice is reduced and understanding is promoted. The CCG's training needs analysis will ensure that training is appropriate and effective. New staff will be made aware of the policy at the CCG induction.

Appendix A: Prohibited conduct definitions

The definitions here are a guide and the exact meaning is that given to them by the Equality Act 2010.

1. Direct discrimination

A person discriminates against another if, because of a protected characteristic, they treat a person less favorably than they treat or would treat others.

If the protected characteristic is age, it will not be discrimination if the treatment can be shown to be a proportionate means of achieving a legitimate aim.

If the protected characteristic is disability, it will not be discrimination to treat disabled people more favorably than people who are not disabled.

If the protected characteristic is sex less favorable treatment of a woman includes less favorable treatment of her because she is breast-feeding.

1.1. Discrimination by association

It is direct discrimination if an employer treats a worker less favorably because of the worker's association with another person who has a protected characteristic; however, this does not apply to marriage and civil partnership or pregnancy and maternity. In the case of pregnancy and maternity, a worker treated less favorably because of association with a pregnant woman, or a woman who has recently given birth, may have a claim for sex discrimination.

1.2. Discrimination by perception

It is also direct discrimination if an employer treats a worker less favorably because the employer mistakenly thinks that the worker has a protected characteristic. However, this does not apply to pregnancy and maternity or marriage and civil partnership.

2. Discrimination arising from disability

A person discriminates a disabled person if they are treated unfavorably because of something arising in consequence of their disability, and it cannot be shown that the treatment is a proportionate means of achieving a legitimate aim. This only applies if the person did not know, and could not reasonably have been expected to know about the disability.

3. Sex reassignment discrimination: cases of absence from work

In the work context a person discriminates against a trans person if, in relation to an absence that is because of Sex reassignment, they treat them less favorably than they would if the absence was because of sickness or injury, or for some other reason and it is not reasonable for the trans person to be treated less favorably.

A person's absence is because of Sex reassignment if it is because they are proposing to undergo, are undergoing or have undergone the process (or part of the process) to reassign their sex by changing physiological or other attributes of sex.

Pregnancy and maternity discrimination: non-work cases

A person discriminates against a woman if during the protected period, which finishes when maternity leave ends or when the employee returns to work, they treat her unfavorably because she has given birth, including treating her unfavorably because she is breastfeeding. The treatment may still amount to sex discrimination if it falls outside of this period. For the purposes of this type of discrimination, the day on which a woman gives birth is the day on which she gives birth to a living child, or gives birth to a dead child (more than 24 weeks of the pregnancy having passed).

4. Pregnancy and maternity discrimination: workcases

Direct discrimination is when a female employee is treated unfavorably because of her pregnancy or maternity leave or because she is breastfeeding. A person discriminates against a woman at work if, in the protected period in relation to a pregnancy of hers, they treat her unfavorably because of her pregnancy, or because of illness suffered by her as a result of it (e.g. morning sickness).

A person discriminates against a woman if they treat her unfavorably because she is on compulsory maternity leave, or because she is exercising or seeking to exercise, or has exercised or sought to exercise, the right to ordinary or additional maternity leave.

The protected period, in relation to a woman's pregnancy, begins when the pregnancy begins, and ends either:

- if she is entitled to ordinary and additional maternity leave, at the end of the additional maternity leave period; or
- when she returns to work after giving birth, if that is earlier; or
- if she is not entitled to maternity leave, for example because she is not an employee, two weeks after the baby is born

5. Indirect discrimination

A person discriminates against another if they apply to them a 'provision, criterion or practice' that is discriminatory in relation to a protected characteristic (except pregnancy and maternity).

A provision, criterion or practice is discriminatory if:

- It is applied, or would be applied, to people who do not share the characteristic,
- It puts, or would put, people who share the characteristic at a particular disadvantage when compared with people who do not share it,
- It puts, or would put, a person with a protected characteristic at that disadvantage, and
- It cannot be shown to be a proportionate means of achieving a legitimate aim.

6. Failure to make reasonable adjustments for disabled people

The duty to make reasonable adjustments requires the CCG to take positive steps to ensure that disabled people can access and progress within services (e.g. healthcare) or work. This goes beyond simply avoiding discrimination and means taking steps to which non-disabled people are not entitled. For further information refer to the corresponding section in the main Equality and Human Rights Policy.

7. Harassment

A person harasses another if they engage in unwanted conduct related to a protected characteristic (except marriage and civil partnership or pregnancy and maternity), and the conduct has the purpose or effect of violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

7.1. Sexual Harassment

A person also harasses another if they engage in unwanted conduct of a sexual nature, and the conduct has the purpose or effect of violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment.

7.2. Rejection or submission

A person also harasses another if (i) they or another person engages in unwanted conduct of a sexual nature or that is related to Sex reassignment or sex, (ii) the conduct has the purpose or effect of violating their dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment; and, (iii) because of their rejection of or submission to the conduct, they treats them less favourably than they would treat them if they had not rejected or submitted to the conduct.

In deciding in each of the categories above whether conduct violates a person's dignity, or creates an intimidating, hostile, degrading, humiliating or offensive environment the following have to be taken into account: (a) the perception of the complainant; (b) the other circumstances of the case; and, (c) whether it is reasonable for the conduct to have that effect.

8. Victimisation

A person victimises another person if they subject them to a detriment because they do a protected act, or they believe that they have done, or may do, a protected act.

Protected acts are bringing proceedings; giving evidence or information in connection with such proceedings or doing any other thing for the purposes of or in connection with making an allegation (whether or not express) that they or another person has contravened the Equality Act 2010.

Giving false evidence or information, or making a false allegation, is not a protected act if the evidence or information is given, or the allegation is made, in bad faith.

9. Enquiries about disability and health

For the purposes of this section alone, whether or not a person has a disability is to be regarded as an aspect of that person's health.

It is a contravention enforceable as an unlawful act under the Equality Act 2010 for a person, to whom an application for work is made, to ask about the health of the job applicant before offering them work (including allowing a contract worker to do the work) both conditionally or unconditionally, or including them in a pool of job applicants to select a person to offer work to when a position later becomes available.

It is not a contravention merely to ask about a job applicant's health; but what the CCG does in reliance on the information given in response may be a contravention of particular disability provisions for employment (refer to section 60 (11) of the Equality Act 2010 for

further detail).

It is not a contravention to a question that the CCG asks in so far as asking the question is necessary for the purpose of:

- Establishing whether a job applicant will be able to comply with a requirement to undergo an assessment or establishing whether a duty to make reasonable adjustments is or will be imposed on the CCG in relation to the job applicant in connection with a requirement to undergo an assessment
- Establishing whether the job applicant will be able to carry out a function that is intrinsic to the work concerned (once all reasonable adjustments have been made)
- Monitoring diversity in the range of persons applying to the CCG for work
- Taking positive action (see relevant section above)
- To establish whether a job applicant is disabled where it is an 'occupational requirement' of a particular role for the post-holder to have a particular disability (see the relevant section above).

For more information please refer to the CCG's Recruitment Policy.

10. Breach of an equality clause

The right of men and women to receive equal pay for equal work is contained in the Equality Act 2010. The right automatically implies a 'sex equality clause' into all contracts of employment, entitling a woman to equal pay for equal work. Therefore a woman doing equal work with a man in the same employment is entitled to equality in pay and other contractual terms, unless the CCG can show that there is a material reason for the difference which does not discriminate on the basis of her sex.

Where there is equal work, the Equality Act 2010 implies a sex equality clause automatically into the woman's contract of employment, modifying it where necessary to ensure her pay and all other contractual terms are no less favourable than the man's.

Where a woman doing equal work shows that she is receiving less pay or other less favourable terms in her contract, or identifies a contract term from which her comparator benefits and she does not (for example he is entitled to a company car and she is not), the CCG will have to demonstrate why this is. If the CCG is unable to show that the difference is due to a material factor that has nothing to do with her sex, then the equality clause takes effect.

These equal pay provisions apply to all contractual terms including wages and salaries, non-discretionary bonuses, holiday pay, sick pay, overtime, shift payments, and occupational pension benefits, and to non-monetary terms such as leave entitlements or access to sports and social benefits.

For more information please refer to the CCG's Job Design and Evaluation Policy.

11. Breach of maternity equality clause

A woman should not receive lower pay or inferior contractual terms at work for a reason relating to her pregnancy and a maternity equality clause is implied into her contract to ensure this. There is no need to show equal work with a comparator in this situation.

The maternity equality clause applies to:

- the calculation of contractual maternity-related pay
- bonus payments during maternity leave, and
- pay increases following maternity leave

Maternity leave includes compulsory, ordinary and additional maternity leave. For more information please refer to the CCG's Maternity, Paternity and Adoption Leave Policy.

12. Relationships that have ended (prohibited conduct)

It is unlawful to discriminate or harass someone or fail to make a reasonable adjustment for a disabled person in any former relationship in which the CCG is prohibited from discriminating against or harassing another, such as in employment (i.e. an ex-employee), or in the provision of goods, facilities and services (i.e. a former patient). The prohibition is designed to ensure that unlawful treatment which results from – and is closely linked to – the existence of a relationship is still unlawful even though the relationship no longer exists.

13. Unlawful acts of employees and agents

It is unlawful for an employee or agent to contravene one of the prohibitions in the Equality Act where the contravention amounts to also having been done by the CCG as their employer or as their principal. This creates a potential personal liability for employees or agents for contraventions of the Act in addition (or separate to) the CCG liability. The CCG may avoid liability where it can show that it took all reasonable steps to prevent the employee or where the agent acted without its authority.

It is an offence for the CCG to knowingly or recklessly make a false statement about the lawfulness of a contravention under the Equality Act 2010 to an employee or agent.

14. Instructing, causing or inducing discrimination

It is unlawful for a person to instruct, cause or induce (directly or indirectly) someone else to discriminate against, harass or victimise another person because of a protected characteristic, or to attempt to do so.

Both the recipient of the instruction and the intended victim, whether or not the instruction was carried out, are protected provided they suffer a detriment as a result.

15. Aiding contraventions

It is unlawful for a person to help someone carry out an act which he or she knows is unlawful under the Equality Act 2010. However, this is not unlawful if the person giving assistance has been told that the act is lawful and he or she reasonably believes this to be true.

It is an offence, punishable by a fine of (at the time of writing) up to £5,000, knowingly or recklessly to make a false statement about the lawfulness of doing something under the Equality Act 2010.

Appendix B: Reasonable adjustment notes

1. **‘Provision, criterion or practice’** (in relation to reasonable adjustments and indirect discrimination) should be interpreted widely so as to include, for example, any formal or informal policies, rules, practices, arrangements, criteria, conditions, prerequisites, qualifications or provisions.

A provision, criterion or practice may also include decisions to do something in the future such as a policy or criterion that has not yet been applied, as well as a ‘one-off’ or discretionary decision. This applies to the work of Committees and Boards within the CCG.

2. **‘Physical feature’** of a building or premise includes any feature arising from the design or construction of a building; any feature on the premises of any approach to, exit from, or access to a building; any fixtures, fittings, furnishing, furniture, equipment in or on premises; and any other physical element or quality. Avoiding a substantial disadvantage caused by a physical feature includes removing or altering it, or ‘providing a reasonable means of avoiding it’.
3. **‘Auxiliary aid’** is any aid or services which provides additional support or assistance to a disabled person (e.g. an interpreter, an extra member of staff, audio-visual fire alarms or a special pill dispenser)

The CCG is prohibited from requiring disabled people to pay to any extent the costs of making reasonable adjustments.

The duty to make reasonable adjustments is in relation to overcoming a **‘substantial disadvantage’**, which is one that is more than minor or trivial. It is also a continuing duty and the CCG should keep the duty under regular review as what is reasonable may evolve over time.

Reasonable steps

The duty to make reasonable adjustments places the CCG under a responsibility to take such steps, as it is reasonable, in all the circumstances of the case, to have to take in order to make adjustments. Without being exhaustive, here are some of the factors that might be taken into account when considering what is reasonable:

- a. Whether taking any particular steps would be effective in overcoming the substantial disadvantage that disabled people face;
- b. The extent to which it is practicable for the CCG to take the steps;
- c. The financial and other costs of making the adjustment;
- d. The extent of any disruption which taking the steps would cause;
- e. The extent of the CCG’s financial and other resources;
- f. The amount of any resources already spent on making adjustments; and
- g. The availability of financial or other assistance (such as through the ‘Access to Work’ scheme operated by Jobcentre Plus)

In a work context, if making a particular adjustment would increase the risk to health and

safety of any person (including the disabled worker in question) then this is a relevant factor in deciding whether it is reasonable to make that adjustment. Suitable and sufficient risk assessments will be used to help determine whether such risk is likely to arise.

Restrictions

A failure to comply with a duty to make reasonable adjustments cannot be justified; however there are restrictions on what is considered 'reasonable'. It is a question of 'reasonableness' that determines whether the adjustment has to be made. The question of the reasonableness of an adjustment is an objective one for the courts to determine.

Appendix C: Terms of the Equality Act

Protected Characteristics

The characteristics protected by the provisions of the Equality Act 2010:

- Age
- Disability
- Sex reassignment
- Marriage and Civil Partnership
- Pregnancy and Maternity
- Race
- Religion or Belief
- Sex
- Sexual Orientation

Other characteristics are not protected and promoted by the Equality Act 2010 but are still relevant to promoting equality in a broader sense. Staff must ensure that the enjoyment of the rights and freedoms set forth in the European Convention on Human Rights (ECHR) are secured without discrimination on any ground such as: political or other opinion, birth or other status, trade union membership etc. (see Appendix C).

Further characteristics, such as; income, homelessness and sex workers are associated with health disparities and are especially relevant for targeted health improvement initiatives that staff should remain aware of within their conduct. Military and veteran status is promoted by the nation's Military Covenant and places obligations upon the CCG to ensure timely access to healthcare.

Age

Age refers to a person 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.

Disability

A person is disabled if they have a physical or mental impairment, which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

The CCG supports the social model of disability whereby people are disabled by social factors, rather than locating the cause of the disability within the individual person.

Sex reassignment

The Equality Act defines this characteristic as: 'Where a person has proposed, started or completed a process to change his or her sex.' A person who has undergone any social, medical or legal transition to present as a Sex other than that they were legally assigned at birth (commonly referred to as 'TransSex' or 'Trans') is protected under this characteristic. The person does not require being under medical supervision to have the characteristic of Sex reassignment.

The CCG recognises that the term 'transsexual', as used in the Equality Act 2010 is a medico-legal term that is used in the wording of the law, but also acknowledges that many people do not identify with that term who otherwise may be protected under the Sex reassignment provisions of the Equality Act 2010. Within this policy, people who share this characteristic are referred to as 'Trans', in line with current best practice for the use of inclusive terminology.

The CCG commits to using inclusive terminology within communications, for example using the term 'Trans'.

Race

Race refers to a group of people defined by their race, colour, and nationality (including citizenship) 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. A racial group can be made up of two or more different racial groups, e.g. Black Britons or White Irish.

Religion or belief

The protected characteristic of religion or religious or philosophical belief includes a lack of religion or belief (e.g. Atheism). It is a broad definition in line with the freedom of thought, conscience and religion guaranteed by Article 9 of the European Convention on Human Rights. The main limitation for the purposes of Article 9 is that the religion must have a clear structure and belief system.

Sex

Sex refers to a person's legal sex (Male or Female – sometimes referred to in legislation as 'Man' and 'Woman')

The CCG recognises that the terminology used to describe the characteristic of sex in the Equality Act and other legislation reflects a binary model of sex which can be taken to exclude Trans and Non-Binary identities, however the protections of the Equality Act 2010 should be understood to apply under the provisions of sex as a 'shared characteristic', however construed.

Pregnancy and Maternity

- Pregnancy is the condition of being pregnant or expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. It is unlawful to discriminate against an employee because they are pregnant or have a pregnancy-related illness. This covers the protected period which finishes when maternity leave ends or when the employee returns to work.
- Discrimination because of pregnancy or maternity is automatic discrimination. There is no need for the woman to show that she has been treated less favourably than a male employee, or a female employee who was not pregnant.
- Direct discrimination by perception does not apply to pregnancy and maternity.

The CCG recognizes that the terminology used within the Equality Act 2010 reflects a model of Pregnancy and Maternity which excludes Trans and Non-Binary identities of individuals who may be affected by Pregnancy and Maternity, however the protections of the Equality Act should still be understood to apply under the provisions of the shared characteristic of Pregnancy and Maternity

Sexual orientation

Under the terms of the Equality Act 2010, sexual orientation refers to a person's sexual attraction towards people of their own sex (i.e. gay or lesbian), people of the opposite sex (i.e. heterosexual) or to people of both sexes (i.e. bisexual).

The CCG recognises that this definition and terminology reflects a narrow, binary model of sexual orientation which does not reflect the spectrum of sexual orientation recognised in best practice, however the protections of the Equality act should be understood to apply to all orientational configurations of human sexual attraction.

Marriage and Civil Partnership

Same sex couples can have their relationships legally recognised as 'civil partnerships' under the Civil Partnership Act 2004. Same sex couples can now also have their relationships legally recognised as 'marriages' under The Marriage (Same Sex Couples) Act 2013. Civil partnerships and same sex marriages must be treated the same as heterosexual marriages on a wide range of legal matters. The Marriage (Same Sex Couples) Act makes the marriage of same sex couples lawful in England and Wales, while protecting and promoting religious freedom.

Prohibited conduct

Prohibited conduct as set out within the Equality Act 2010 which is relevant to the CCG includes:

- Direct discrimination
 - Discrimination by association
 - Discrimination by perception
- Discrimination arising from disability
- Sex reassignment discrimination: cases of absence from work
- Pregnancy and maternity discrimination: non-work cases
- Pregnancy and maternity discrimination: work cases
- Indirect discrimination
- Failure to make reasonable adjustments for disabled people
- Harassment
- Victimisation
- Enquiries about disability and health
- Breach of an equality clause
- Breach of maternity equality clause
- Relationships that have ended (prohibited conduct)
- Unlawful acts of employees and agents
- Instructing, causing or inducing discrimination
- Aiding contraventions.

For further information please refer to 'Appendix A: Prohibited conduct definitions'

Definition of Worker

For the purposes of the Equality Act 2010 and this policy the term 'worker' refers to people who are working for the CCG, whether or not this is under a contract of employment, and this includes bank staff. The term 'worker' also includes, for example, contractors (such as agency staff) and office holders. The terms 'employee' and 'job applicant' are only used where specific provisions apply.

Equality Impact Assessment for HR Policies

Directorate/Department	HR
Policy	Equality & Diversity
New or Existing Policy?	New
Name and role of the Assessor	Tracy Lucas and Emma Snowdon
Date of Assessment	18 January 2017

Please complete the following questions

		Yes	Comm
1	Does the policy/Guideline affect one group less or more favourably than another on the basis of:		Affects all groups favourably.
	Race, Ethnic origins (including, gypsies and travellers) and Nationality		
	Sex (including transSex and Sex reassignment)		
	Age		
	Religion, Belief or Culture		
	Disability – mental, physical and learning disability		
	Sexual orientation including lesbian, gay and bisexual people		
	Married/or in civil partnership		
	Pregnancy/maternity		
2	Is there any evidence that some groups are affected differently?	No	
3	Is there a need for external or user consultation?	No	
4	If you have identified potential discrimination, are any exceptions valid, legal and/or justifiable?	N/A	

5	Is the impact of the policy/guideline likely to be negative?	No	
6	If so, can the impact be justifiable?	N/A	
7	What alternatives are there to achieving the policy/guidelines without the impact?	N/A	
8	Can we reduce the impact by taking different actions?	N/A	

Recommendation Full Equality Impact Assessment required:	NO <input checked="" type="checkbox"/> YES <input type="checkbox"/>
Assessment authorised by: Tracy Lucas and Emma Snowdon	Date: 18/01/2017.

Effective From:

24 March 2017

Ratified by the Governing Body:

22 March 2017

Review Date:

3 years from issue

Responsible Director:

Chief Accountable Officer

To be read in conjunction with Brighton and Hove CCG Policies:

Compliance with all Brighton & Hove CCG policies is a condition of employment. Breach of policy may result in disciplinary action.

Policy Category:

Relevant to
(Staff Group): **All staff in Brighton & Hove CCG**

Version History:

1	December 2016	Draft version to JSC
2	9 January 2016	JSC discussion and agreement
3	8 February 2017	Policy to SMT
4	22 March 2017	Policy to P&G

All reasonable steps have been taken to ensure that this Policy reflects the:

Equality and diversity agenda

Relevant articles of the Human Rights Act 1998

Philosophy of Clinical Governance, providing evidence for compliance with the requirements of the Standards for Better Health of the Department of Health and the NHS Litigation Authority Risk Management Standard for PCTs

Health and Safety at Work Act 1974 and associated legislation

Freedom of Information Act 2000

Equalities Act 2010