EQUAL OPPORTUNITIES IN EMPLOYMENT

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### CONSULTATION AND DISTRIBUTION RECORD

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1. INTRODUCTION

NHS Lanarkshire recognises the talents of all members of staff and is committed to equality of opportunity in employment both in principle and in practice. NHS Lanarkshire will ensure that appropriate monitoring processes, including electronic systems, are set up to evaluate the introduction and the effectiveness of this policy within its divisions/departments.

Other policies/guidance which may be useful include:-

- Redeployment Policy
- Recruitment and Selection Policy
- Regrading Policy
- Paternity Leave Policy
- Maternity Leave Policy
- Adoption and Fostering Policy
- Parental Leave Policy
- Breastfeeding and Returning to Work Policy
- Special Leave Policy
- Personal Development Planning and Review Policy
- Organisational Change Policy
- Disputes & Grievance Policy
- Bullying, Harassment & Victimisation Policy
- Whistleblowing Policy

The above policies are available under HR policies on Firstport. [http://firstport/C2/Human%20Resources/default.aspx](http://firstport/C2/Human%20Resources/default.aspx)

2. AIM, PURPOSE AND OUTCOMES

The aim of this policy is to ensure that no job applicant or member of staff receives less favourable treatment, either directly or indirectly, on the grounds of the Equality Act 2010 Protected Characteristics: age; disability; gender reassignment; marriage or civil partnership; religion or belief; pregnancy or maternity; race; sex, sexual orientation; or on the grounds of language or social origin, or other personal attributes.

NHS Lanarkshire is also committed to, whenever possible, achieving and maintaining a workforce which reflects the local community. We recognise that it is in our best interests to ensure that the human resources, talents and skills available throughout the community are considered when employment opportunities arise.

This policy sets out the equal opportunities framework for NHS Lanarkshire, which will ensure that individuals are treated equally and fairly, and that decisions on recruitment, selection, training, promotion and career management are based solely on objective and job related criteria.

3. SCOPE
NHS Lanarkshire is committed to promoting equal opportunities for staff, contractors, job applicants and patients. NHS Lanarkshire will not tolerate and will take steps to prevent: direct and indirect discrimination; discrimination by perception or by association; harassment by any member of staff; or victimisation.

NHS Lanarkshire will ensure that the application of any form of Positive Action or of a Genuine Occupational Requirement meets a legitimate aim and is in line with legislation.

These terms are further detailed in the Appendix 1 and in the NHS Lanarkshire Recruitment and Selection Policy.

This policy applies to all directly employed staff of NHS Lanarkshire, irrespective of age; disability; gender reassignment; marriage or civil partnership; religion or belief; pregnancy or maternity; race; sex, sexual orientation; or on the grounds of social origin, or other personal attributes.

4. **PRINCIPAL CONTENT**

4.1 **Recruitment**
NHS Lanarkshire recognises its duty to provide an effective service staffed by appropriately skilled and qualified people drawn from all sections of the community and is committed to fulfilling its obligations under current UK and EC law both in practice and in spirit. To achieve this, recruitment will be free of bias and unfair discrimination and selection will be based on merit.

Recruitment and promotion decisions will be made on the basis of justifiable job requirements and the skills and qualifications of the individual in line with the NHS Lanarkshire Recruitment and Selection Policy.

4.2 **Promotion**
NHS Lanarkshire will ensure there is an element of competition in internal promotion. The employer will not presume that an individual with a protected characteristic does not want promotion or an opportunity for advancement/development.

All applicants will be asked to complete an equal opportunities monitoring form, which will not be made available to a selection panel.

4.3 **Recruitment Training**
NHS Lanarkshire staff involved in the recruitment and selection process should receive training in equality and diversity. The depth of training will be appropriate to their degree of involvement in the recruitment process.

External Assessors will receive a copy of the NHS Lanarkshire Equal Opportunities Policy and relevant information on NHS Lanarkshire redeployment and recruitment practice.
4.4 Development and Training
All decisions on training and career development will be made on agreed needs and relevant job-related criteria in line with the NHS Lanarkshire Personal Development Planning and Review Policy. Selection criteria for development and training will be objective and job-related and staff will not be excluded from such opportunities by assumptions about availability or willingness to participate in training.

Training courses/materials should ensure an inclusive non-discriminatory approach is taken which does not reinforce negative stereotypes but recognises and values equality.

4.5 Fair Treatment
There will be no unfair discrimination in the access or entitlement to conditions of service. Reasonable requests for flexible working arrangements, eg: job-sharing, part-time working, working from home will be given full consideration with regard to the policy parameters in existence.

NHS Lanarkshire is committed to allocating and applying all conditions whether nationally or locally agreed, in a fair and equitable manner and to ensure that no member of staff receives greater or less favourable treatment on grounds of age, disability, gender reassignment, marriage or civil partnership, religion or belief, pregnancy or maternity, race, sex, sexual orientation.

4.6 Remedies Under The Policy

4.6.1 Grievances
Any member of staff who has evidence that they are being treated less favourably on the grounds of a protected characteristic i.e. their age, disability, gender reassignment, marriage or civil partnership, religion or belief, pregnancy or maternity, race, sex or sexual orientation should raise the matter through NHS Lanarkshire’s Resolution of Disputes and Grievances (Employee Dissatisfaction) policy.

No member of staff expressing concern about the application of the NHS Lanarkshire Equal Opportunities Policy will be treated less favourably as a result; or will be subject to disciplinary action as a result of raising such a grievance.

4.6.2 Bullying & Harassment
If the complaint is one of bullying or harassment then the member of staff should raise the matter through NHS Lanarkshire’s Dignity at Work policy.

4.6.3 Disciplinary Action
All staff and managers must adhere to the NHS Lanarkshire Equal Opportunities Policy and failure to do so will be investigated under the terms of the NHS Lanarkshire Effective Management of Employee Conduct policy.

In applying the disciplinary procedures, care must be taken to ensure that a member of staff or members of one group are treated equally under the relevant policy.

5. ROLES AND RESPONSIBILITIES

Employees must:
- Ensure they are familiar with the policy and procedures
- Comply with the policy
- Attend training as necessary
Managers must:
- Ensure they communicate with staff about the policy
- Consistently implement the policy at their local level
- Keep accurate records
- Ensure staff are offered appropriate opportunity to participate in Equality & Diversity training
- Be positive about equal opportunities and this should be assessed as part of their Personal Development and Review. The demands of an increasingly diverse workforce must be enhanced by diverse leadership, allowing the development of new perspectives and new opportunities for all staff regardless of age, disability, gender reassignment, marriage or civil partnership, religion or belief, pregnancy or maternity, race, sex, sexual orientation.

Staff Side Representatives must:
- Support the principles and procedures in the policy
- Act in accordance with NHS Lanarkshire’s Partnership Agreement
- Undertake training as appropriate

Human Resources Staff must:
- Provide expert advice and support on the application of the policy
- Monitor and review the policy

Other Sources of Information:
- A list of helpful contents is indicated as Appendix 2 and the legal framework for the policy is included in Appendix 3.

6. RESOURCE IMPLICATIONS

None identified other than time off for training as required.

7. COMMUNICATION PLAN

This policy will be launched using the weekly staff briefing and it will be available on Firstport.

This policy will also be discussed at the appropriate management team meetings and local partnership forums.

8. QUALITY IMPROVEMENT – Monitoring and Review

This policy will be reviewed every three years via the Joint Policy Forum

NHS Lanarkshire will ensure that effective monitoring systems are set up to monitor, evaluate and feed back information on equal opportunities to the Human Resources Forum and the Staff Governance Committee.

NHS Lanarkshire will monitor the following equality indicators to comply with equality legislation requirements:
- Gender, ethnicity, disability, age, occupational groups and grade and whether full or part-time.
• Black and ethnic minority staff as percentage of total headcount employed;
• Female staff as percentage of total headcount employed;
• Staff employed in various age bands as percentage of total headcount employed;
• Number of staff who declare themselves to be disabled;
• Number of staff employed in senior posts with regard to the above profiling;
• Annual number of leavers and reason for leaving by gender as percentage of total headcount of staff in post; ensuring compliance with personal data policy;
• Annual number of staff returning at the same level after maternity leave of 12 months as percentage of staff taking maternity leave;
• Percentage of staff by occupational groups, grade, gender and whether full or part-time;
• Individual training activity;
• Number of grievance, disciplinary, harassment & violent incidents related to discrimination by age, disability, gender reassignment, marriage or civil partnership, pregnancy or maternity, race, religion or belief, sex, sexual orientation.

NHS Lanarkshire will ensure that the reasons for collecting this information are discussed with staff so that they are aware and prepared to fully participate in the data collection. Data can only be useful if it covers the whole of the workforce. Staff must also be reassured that the information will be collected in line with the Data Protection Act.

The indicators will allow for a more informed basis for setting meaningful objectives and targets for NHS Lanarkshire, action to be taken and the determination of resource implications.

**Indicators of Success**

It is important to have clear indicators of success for effective monitoring and any necessary remedial action. These indicators include:

• the ability to use the information collected for the equality indicators to enable a base line to be established;
• the development of a set of equality objectives for each year;
• HR policies which are compliant with equality legislation to support staff;
• All staff will know about relevant policies,
• NHS Lanarkshire will meet the criteria to use the employment service disability symbol (two ticks);

9. **EQUALITY AND DIVERSITY IMPACT ASSESSMENT**

   This policy meets NHS Lanarkshire’s EDIA

   (tick box

10. **APPENDICES**

   Appendix 1 ………………………………………………………………………Glossary of Terms

   Appendix 2……………………………………………………………………Helpful Contacts

   Appendix 3 ………………………………………………………………….. Legal Framework

   **APPENDIX 1**
Glossary of Terms

**Discrimination:**

**Direct Discrimination:** Where an individual is treated less favourably than another person because of a protected characteristic.

**Indirect Discrimination:** Where a rule or policy applies to everyone but disadvantages an individual or individuals with a particular protected characteristic.

**Associative discrimination:** Direct discrimination against someone because they associate with another person who possesses a protected characteristic.

**Discrimination by perception:** Direct discrimination against someone because the others think they possess a particular protected characteristic.

**Positive action:**

Positive action refers to positively targeting under-represented groups within organisations through a number of initiatives, schemes or actions e.g. mentoring schemes for ethnic minority staff where they are under-represented in senior roles, or open days to encourage women applicants in male-dominated sectors.

Positive Action can be taken when:-

- People who share a protected characteristic suffer a disadvantage connected to that characteristic
- People who share a protected characteristic have needs that are different from the needs of people who do not share it, or
- Participation in an activity by people who share a protected characteristic is disproportionately low.

The Equality Act has now extended Positive Action to include situations where a candidate who is of equal merit to another candidate may be recruited or promoted over the other, because the employer reasonably thinks the candidate has a protected characteristic that is underrepresented in the workforce.

However, positive action does not allow an employer to appoint a less suitable candidate just because that candidate has a protected characteristic that is under-represented.

**Genuine Occupational Qualification:** Discrimination will not be unlawful if an employer can show that is it necessary for a post to be filled, for example, by a particular sex or by a person from a particular racial group. The circumstances which such restrictions would be justified are narrow.

**Harassment:**

**Harassment:** Harassment is unwanted conduct affecting the dignity of men and women in the workplace. It can take a variety of forms and may involve action, comment, physical contact, innuendo or overt exclusion. This can result in the recipient feeling coerced, embarrassed, humiliated, patronised, distressed, threatened or intimidated.

Harassment applies to all protected characteristics except for pregnancy and maternity and marriage and civil partnership. Employees are able to complain of behaviour that they find
offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Employees are also protected from harassment due to perception (discrimination against an individual because others think they possess a particular protected characteristic) and associative (discrimination against someone because they associate with another person who possesses a protected characteristic).

Victimisation:

Victimisation: Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.

Positive about Disabled People Scheme: The disability symbol is made up of two ticks and the words ‘positive about disabled people’. If an employer uses this symbol, it means they are positive about employing disabled people and will be keen to know about your abilities.

The symbol is awarded by Jobcentre Plus to employers in England, Scotland and Wales who have made commitments to employ, keep and develop the abilities of disabled staff.

Employers who use the disability symbol make five commitments regarding recruitment, training, retention, consultation and disability awareness.

These commitments are:

- to interview all disabled applicants who meet the minimum criteria for a job vacancy and to consider them on their abilities;
- to discuss with disabled employees, at any time but at least once a year, what both parties can do to make sure disabled employees can develop and use their abilities;
- to make every effort when employees become disabled to make sure they stay in employment;
- to take action to ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work;
- to review these commitments each year and assess what has been achieved, plan ways to improve on them and let employees and Jobcentre Plus know about progress and future plans

Pay Secrecy

Under the Equality Act it is unlawful to prevent or restrict employees from having a discussion to establish if differences in pay exist that are related to protected characteristics. It also makes terms of the contract of employment that require pay secrecy unenforceable because of these discussions however, an employer can require their employees to keep pay rates confidential from some people outside the workplace, for example a competitor organisation.
HELPFUL CONTACTS

Central Legal Office
Anderson House
Tel: 0131 275 7800
Fax: 0131 275 7990
Website: www.clo.scot.nhs.uk
Tel: 0131 275 7760

NHS Health Management Library
Scottish Health Service Centre
Crewe Road South
Edinburgh
EH4 2LF
Tel: 0131 275 7760
Website: www.healthmanagementonline.co.uk
Email: nss.hmlibrary@nhs.net

Commission for Equality and Human Rights
The Optima Building
58 Robertson Street
Glasgow
G2 8DU
Tel: 0845 604 5510
Textphone: 0845 604 5520
email: Scotland@equalityhumanrights.com
website: www.equalityhumanrights.com

Advisory Conciliation and Arbitration Service
ACAS (Scotland)
Franborough House
123-157 Bothwell Street
Glasgow
G2 7JR
Tel: 0141 204 2677
Fax: 0141 221 4697
website: www.acas.org.uk

Provides advice on general employment matters only.
ACAS also have public inquiry points throughout
the country and you should consult your
telephone directory for details of the nearest point.

Stonewall
Tower Building
York Road
London
SE1 7NX
Tel: 08000 50 20 20
Fax: 020 7593 1877
Website: www.stonewall.org.uk

Transgender Alliance
Equality Network office
30 Bernard Street
Edinburgh
EH6 6PR
Tel: 07020 933 952
Fax: 07020 933 954
email: en@quality-network.org
website: www.scottishtrans.org

The work of the Scottish Transgender Alliance is carried out within the auspices of the
Equality Network. The Equality Network promotes lesbian, gay, bisexual and transgender
equality and rights across Scotland.

Disability Scotland
Princes House
5 Shandwick Place
Edinburgh
EH2 4RE
Tel: 0131 229 8632
Fax: 0131 229 5168
email: inquiries@disabilityscotland.org.uk
website: www.disabilityscotland.org.uk
**Employers Forum on Disability** Provides general advice on disability matters & information relating to the Disability Discrimination Act. Helpdesk: 0207 403 3020
Website: [www.employers-forum.co.uk](http://www.employers-forum.co.uk)

**Positive about Disabled People Award**
The symbol is awarded by Jobcentre Plus to employers in England, Scotland and Wales who have made commitments to employ, keep and develop the abilities of disabled staff.
Website: [www.direct.gov.uk/en/DisabledPeople/Employmentsupport](http://www.direct.gov.uk/en/DisabledPeople/Employmentsupport)

**Home Office Immigration Helpline** Provides information to employers on job-seekers right to work on 0208 649 7878 Website: [www.workpermits.gov.uk](http://www.workpermits.gov.uk)

**Other Sources**
Other sources of information include: Local Enterprise Companies (LECs); Racial Equality Councils (RECs); Local Authorities; and Employment Service.
Legal Framework

The Equality Act 2010

The Equality Act 2010 aims to simplify the law by bringing together several pieces of anti-discrimination legislation. It replaces the following employment legislation:

• Equal Pay Act 1970
• Sex Discrimination Act 1975
• Race Relations Act 1976
• Disability Discrimination Act 1995
• Employment Equality (Religion or Belief) Regulations 2003

The Act covers the same groups that were protected by existing equality legislation, but they are now referred to as ‘protected characteristics’. These are:

• age
• disability
• gender reassignment
• marriage / civil partnership
• pregnancy / maternity
• race
• religion or belief
• sex
• sexual orientation

Age: The Act protects people of all ages. However, different treatment because of age is not unlawful direct or indirect discrimination if you can justify it i.e. if you can demonstrate that it is a proportionate means of meeting a legitimate aim.

Disability: The Act has made it easier for a person to show that they are disabled and protected from disability discrimination. Under the Act, 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, which would include things like using a telephone, reading a book or using public transport. As before, the Act puts a duty on you as an employer to make reasonable adjustments for your staff to help them overcome disadvantage resulting from an impairment (e.g. by providing assistive technologies to help visually impaired staff use computers effectively). The Act includes a new protection from discrimination arising from disability. This states that it is discrimination to treat a disabled person unfavourably because of something connected with their disability (e.g. a tendency to make spelling mistakes arising from dyslexia). This type of discrimination is unlawful where the employer or other person acting for the employer knows, or could reasonably be expected to know, that the person has a disability. This type of discrimination is only justifiable if an employer can show that it is a proportionate means of achieving a legitimate
aim. The Act also includes a new provision which makes it unlawful, except in certain circumstances, for employers to ask about a job applicant’s health.

**Gender reassignment:** The Act provides protection for transsexual people. A transsexual person is someone who proposes to, starts or has completed a process to change his or her gender. The Act no longer requires a person to be under medical supervision to be protected – so a woman who decides to live as a man but does not undergo any medical procedures would be covered. It is discrimination to treat transsexual people less favourably for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment than they would be treated if they were absent because they were ill or injured.

**Marriage and civil partnership:** The Act protects employees who are married or in a civil partnership against discrimination. Single people are not protected.

**Pregnancy and maternity:** 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. During this period, pregnancy and maternity discrimination cannot be treated as sex discrimination. You must not take into account an employee’s period of absence due to pregnancy-related illness when making a decision about her employment.

**Race:** For the purposes of the Act ‘race’ includes colour, nationality and ethnic or national origins, religion or belief. In the Equality Act, religion includes any religion. It also includes a lack of religion, in other words employees or jobseekers are protected if they do not follow a certain religion or have no religion at all. Additionally, a religion must have a clear structure and belief system. Belief means any religious or philosophical belief or a lack of such belief. To be protected, a belief must satisfy various criteria, including that it is a weighty and substantial aspect of human life and behaviour. Denominations or sects within a religion can be considered a protected religion or religious belief. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

**Sex:** Both men and women are protected under the Act.

**Sexual orientation:** The Act protects bisexual, gay, heterosexual and lesbian people. Types of discrimination under the Equality Act can be found in Glossary of Terms, Appendix 1.

**Other Legislation**

**Human Rights Act 1998:** The Human Rights Act 1998 was brought into effect in Scotland through The Scotland Act 1999. The rest of the UK came within the scope of the Act on 2 October 2000. The Act provides among other issues, a right to fair trial and a right to respect family life. It provides for the enjoyment of the rights and freedoms under the European Convention of Human Rights without discrimination on specified grounds, including sex, race, colour, language, religion, and national or social origin.

**Trade Unions and Labour Relations (Consolidation) Act 1992:** This legislation protects employees from discrimination on the grounds of trade union activities or membership, or of non trade union membership.
**Employment Relations Act 1999:** This Act includes a number of "Family Friendly" measures and includes legislation to cover the European Parental Leave Directive. The objective of the Parental Leave Directive is to provide a balance between work and home life. The Act provides employees with rights to parental leave, time off work in family emergencies, as well as simplifying and improving maternity rights.

**The Employment Relations Act 1999 (Blacklists) Regulations 2010 (SI 2010/493):** This Act makes it unlawful for organisations to refuse employment or sack individuals as a result of appearing on a blacklist and makes it unlawful for employment agencies to refuse to provide a service on the basis of an individual appearing on a blacklist. It also enables individuals or unions to pursue compensation or solicit action against those who compile, distribute or use blacklists.

**Rehabilitation of Offenders Act 1974:** The Act governs an employer's ability to make employment decisions based on an employee's past criminal convictions. The Act specifies that after a period of time, anyone who has been convicted of a criminal offence and who has served their sentence, is not obliged to disclose past convictions. The length of time that must elapse before any conviction may be regarded as spent varies according to the nature of the conviction. There are some exceptions to the Act and a number of Health Service posts fall into this category, where disclosure of spent convictions is appropriate and required. In addition to these exceptions further legislation within Scotland allows for criminal records to be checked where a postholder will have substantial access to children. Robust systems require to be in place to comply with this legislation and NHS Circular 1989 (GEN)22 should be applied.

**Immigration, Asylum and Nationality Act 2006:** This Act makes it a criminal offence to take on an employee who is subject to immigration control and who has not been granted leave to enter or remain in the UK, or does not have permission to work in the UK.

**Part Time Workers Regulations:** These regulations which came into effect on 5 May 2000 remove discrimination against part-time workers and increases access to part-time work at all skill levels and responsibility.

**Employment Tribunal Case Law:** This can change and solicitors advice should be sought on current employment tribunal case law. There are also companies which offer compendiums of employment case law and these can be a useful source to provide an indication of current case law.

**Dismissal and Qualifying Period:** It is unlawful to dismiss someone on the grounds covered by current legislation. There is no qualifying period for individuals bringing claims against organisations in discrimination cases.

**The General Duty in the Equality Act 2010**

149 Public Sector Equality Duty

(1) A public authority must, in the exercise of its functions, have due regard to the need to:-
(a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

(b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
(c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

(2) A person who is not a public authority but who exercises public functions must, in the exercise of those functions, have due regard to the matters mentioned in subsection (1).

(3) Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:-

(a) remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;

(b) take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;

(c) encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

(4) The steps involved in meeting the needs of disabled persons that are different from the needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

(5) Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:-

(a) tackle prejudice, and

(b) promote understanding.

(6) Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

(7) The relevant protected characteristics are:- age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; sexual orientation.