



Equality Law
A Manager's Guide to
Getting it Right in NHSGGC



This document has been produced by NHSGGC's Equality and Human Rights Team with the support of the Workforce Equality Group as a guide for operational managers and those with responsibility for service planning and design. It highlights some of the key areas of the Equality Act 2010 which will have specific relevance for risk management and potential legislative breach.

For ease of use the guide has been designed in two sections. Section one, 'Getting it Right for your Team', sets out the expected role of a manager in applying legislation to support the fair and equitable management of a team. Section two, 'Getting it Right for your Patients', sets out the required considerations to enable managers to deliver the best possible person-centred care to protected characteristic groups. Together, the sections inform an approach that will help NHSGGC meet the requirements of equality and human rights legislation and continue to be an employer of choice and exemplar care provider.



Introduction

The Equality Act (2010) serves to strengthen, harmonise and streamline more than 40 years of equalities law. The Act brings together around 116 separate pieces of legislation into a single source to ensure everyone who is protected under the law from discrimination, harassment or victimisation is afforded equitable levels of protection. For those of us working in the Public Sector, the Equality Act 2010 provides additional levels of responsibility we need to be aware of. This is set out in the aligned Public Sector Equality Duty (PSED).

In brief, the Public Sector Equality Duty states that we must show due regard in the way we work to:

- Eliminate unlawful discrimination
- Advance Equality of opportunity
- Foster good relations between different groups of people

Who does the law protect?

The Equality Act 2010 and PSED introduced the concept of protected characteristics, referred to in previous legislation as Equality Groups or Equality Strands.

The protected characteristics are:

Age	Race
Disability	Religion and Belief
Gender Reassignment	Sex
Marriage and Civil Partnership	Sexual Orientation
Pregnancy and Maternity	



What does the law protect against?

The Equality Act 2010 brings a uniform level of protection from discrimination for four main groups of people:

- People with a protected characteristic
- People who associate with others who have a protected characteristic
- People who are mistakenly presumed to have a protected characteristic
- People who may or may not have a protected characteristic but are unwillingly exposed indirectly to discriminatory behaviour (e.g. over-hearing a conversation with racist content between two members of staff).

People with protected characteristics are protected against

- Direct discrimination
- Indirect discrimination
- Discrimination arising from a disability
- Discrimination by association
- Discrimination by perception
- Harassment
- Victimisation.

Examples of each classification of discrimination are provided in this document for team management and patient care scenarios.

A copy of the full legislation can be found at:

[Public sector equality duty - GOV.UK \(www.gov.uk\)](http://www.gov.uk)



Understanding Equality Legislation - Getting it right for your team

To deliver the best possible working environment for our employees, NHSGCC must provide a work place underpinned by the shared core values of Care and Compassion; Dignity & Respect, Openness and Transparency and Quality & Teamwork. It's the role of a manager to create a working environment where these values flourish, nurturing talent and safeguarding rights.

Against this expectation, it's important to acknowledge that people come into this organisation with very different beliefs and values. A good deal of the legislation protects against discrimination or harassment arising from individual behaviour, so it is vital that every member of staff understands their role in helping to create an inclusive and supportive environment.

Managers must take time to inform staff of acceptable behaviours and ensure a robust response is taken when expected standards aren't met. In all cases managers must be confident in applying NHSGCC policies (e.g. Bullying and Harassment Policy).

Where staff are subject to hate incidents perpetrated by patients, visitors or other members of staff, managers must ensure relevant policies are applied and staff supported to complete Datix reports. Where a perceived criminal offence has taken place staff should be supported to report the incident to Police Scotland.

We want our staff to feel supported and listened to, particularly if they believe one or more protected characteristic may be acting as a barrier to fully participating as an employee. For instance, if you have disabled members of staff or if a team member discloses a disability to you, you need to take the time to listen and ask if there are any barriers (arising from their disability) that prevent them from doing their job to the best of their ability.



You'll need to work with the team member to identify and implement any reasonable adjustments required and liaise with Occupational Health and the pro-active e-Health team to make sure the appropriate assessments are made. ACAS have developed resources to support managers, available here [What reasonable adjustments are: Reasonable adjustments - Acas](#).

NHSGGC has supported the development of staff Forums and Networks and encourage employees to get involved. Managers of staff who would like to attend Network meetings should make provision to support this during work time. More information about the Networks can be found here: [NHSGGC Staff Forums](#).

Finally, as a manager you can remind your team to complete or update their eEss equality data. Understanding the demographics of our workforce enables us to make sure we're being fair in our recruitment processes and offering equitable opportunities to our staff – including fair pay. Staff can access the Employee Self Service area here:

[Employee Self Service – NHS Scotland eESS and Recruitment systems](#)

What might discrimination look like in the workplace?

Direct discrimination

Where a decision is made that explicitly excludes someone with a protected characteristic.

Example:

A vacancy for a receptionist working on the front desk of a busy paediatric unit has come up. A member of staff who wears a Niqab asks to be considered for the role. The recruiting manager explains that someone wearing a Niqab in such a public-facing role will be challenging – it might confuse young people using the service and there will be queries from parents. He explains he personally has 'nothing against Muslims' but in this instance it's not the job for her.



This would constitute direct discrimination on the grounds of the protected characteristic of Religion and Belief and the employee would be supported in any action she chooses to take as a result.

Indirect discrimination

Where a rule exists that may inadvertently discriminate against an individual.

Example:

A manager moves their team from a flexible working arrangement to a fixed hour arrangement without due process (including staff consultation and HR support). As a result of the decision, a team member who previously used the flexible arrangement for child care is told they must find alternative arrangements or leave their post.

Though the manager did not set out to specifically exclude an employee on the grounds of a protected characteristic (in this case sex), the indirect result of the decision unfairly impacts on an employee and could constitute indirect discrimination.

Discrimination arising from disability

This is similar to indirect discrimination but specifically relates to the protected characteristic of disability. It prevents discrimination arising from the effects of disability.

Example:

A promoted post in a department becomes available. The role requires some travel to other sites. A visually impaired member of the team is interested in applying but is told by the hiring manager that being a car driver is an essential component so it's not available for them.



There may be a number of alternative arrangements (called reasonable adjustments) that can be made here to enable the disabled member of staff to take on this role. The manager hasn't considered this but has applied a rule that inadvertently discriminates on the grounds of disability.

Harassment

This tends to be unwanted behaviour that demeans or aggravates relations between people who have a protected characteristic and those who do not.

Example:

Two members of staff are overheard by a colleague making racist comments about a patient. This is unwanted behaviour on the part of the colleague who hears the conversation. Importantly, the person who makes the claim of harassment does not need to have the protected characteristic being discussed. In the above instance, a white Scottish employee hearing the conversation is protected.

It's important to stress there is no such thing as 'banter' when it serves to stereotype, demean or belittle people who share a protected characteristic. Any manager dealing with a report of this nature must rigorously investigate and apply appropriate NHS/GGC policies.



Victimisation

This tends to extend to complaints procedures and outcomes for individuals.

Example:

An employee makes a complaint about a colleague, alleging they observed them bullying another team member using homophobic language. After an investigation, the complaint is upheld, but the complainant is taken aside and told they're actions have 'impacted on team spirit so it might be advisable to move to another department'. In the meantime they're moved to another part of the office, away from the team.

Penalising a member of staff for protecting the rights of others in this way would constitute victimisation.

Discrimination by association

There is significant evidence that it is not just people with protected characteristics that are treated unfavourably, but family, friends, carers and many others associated with them. This inclusion extends protection from discrimination and unfair treatment to this group of people on the basis that their discrimination and unfair treatment stems from an association with someone with a protected characteristic.

Example:

A preferred candidate for a job discloses they have a disabled child. The recruiting manager decides not to appoint them because they believe this will lead to future applications for carer's leave and time away from the job.



In this example the applicant is being discriminated against because of their association with a disabled person.

Discrimination by perception

This is where someone is mistakenly perceived to have a protected characteristic and is treated unfavourably as a result.

Example:

A member of staff is assumed to be much younger than they are and subsequently concerns they raise about a work process are dismissed through an assumption that young people don't have the necessary experience to understand organisational demands.

In this example an employee is being discriminated against on the grounds of perceived age.



Understanding Equality Legislation - Getting it right for your patients

In theory, when we provide quality-focused person-centred care to our patients we should be protected against risk of breaching equality legislation. Shaping our service response to match individual need and considering how and where a known protected characteristic should be considered as part of the patient pathway will highlight possible and avoidable barriers to receiving the best care. However, many of the routines we employ within the NHS are based on historical models that in themselves may have unforeseen discriminatory outcomes, and it's important that legislative risk reviews are undertaken. This may take the form of Equality Impact Assessments (EQIAs) that will help interrogate systems and highlight gaps, or other checking mechanisms using the legislation as a guiding framework.

What might discrimination look like for our patients?

Direct discrimination

Where a decision is made that explicitly excludes someone with a protected characteristic.

Example:

A service applies an age criteria to eligible patients stating that anyone above the age of 65 qualifies. There's no justification for applying the rule – it's just the way things have always worked. The service provides a higher level of individual care that's not available via another equivalent service to patients under the age of 65.

Though it's not necessarily a breach of legislation to exclude someone on the grounds of a protected characteristic, the decision needs to be evidence-based in order to objectively justify it.



Indirect discrimination

Where a rule exists that may inadvertently discriminate against an individual.

Example:

A busy outpatient department applies a rule that every patient should have a maximum of 15 minutes per appointment. This allows high volume patient throughput and, because everyone is subject to the same 'rule', there's a sense it must be fair. However, practitioners often have appointments with patients who require additional communication support, either through booked interpreters or working with carers. The additional time needed puts a strain on appointment scheduling, so practitioners find they keep information to a minimum and don't allow time for any questions with this group of patients.

The example shows that people who require additional support can receive a poorer service when our fixed systems fail to 'flex' to meet individual need. The service needs to incorporate additional time for some patients. Without this there's a risk of legislative breach through not showing due regard to advancing equality of opportunity.

Discrimination arising from disability

This is similar to indirect discrimination but specifically relates to the protected characteristic of disability.

Example:

A visitor has travelled from one of the island communities to visit a friend recently admitted with a serious illness. The journey has taken a number of hours after which they arrive with their assistance dog and report to the hospital reception.



The receptionist explains that while their friend can see visitors, the hospital doesn't accommodate dogs onsite for infection control reasons. The receptionist checks with the ward who agree with the decision so the visitor is asked to leave and starts on their long journey home.

While infection control concerns will normally be given priority, in this instance there may have been other options available. We would expect there to be consideration given to making reasonable adjustment here to find a way to accommodate the assistance dog while the visitor is escorted to see their friend. Staff should have reviewed the NHSGGC Assistance Dog Policy to better understand options available to them.

Harassment

This tends to be unwanted behaviour that demeans or aggravates relations between people who have a protected characteristic and those who do not.

Example:

An inpatient in a multi-bedded ward is visited regularly by her wife following major surgery. Shortly before one of her wife's visits, she overhears a conversation at a nearby bed which includes homophobic remarks about her and her partner. In her already vulnerable state, she becomes distressed and when her wife arrives she tells her not to come back for a couple of days because she's 'really tired and needs rest'. Staff see a deterioration in her mood and overall health and ask why her wife's not been in recently. After some prompting she explains the situation.



In this scenario, staff need to step up and protect the patient. This will likely mean speaking to the neighbouring patient and their family, explaining the ramifications for them if the behaviour continues. Harassment between patients and visitors is a rare thing, but when it occurs we have a duty of care to tackle it quickly and decisively.

Victimisation

This tends to extend to complaints procedures and outcomes for individuals.

Example:

A BME patient who requires interpreting support is seen early at a scheduled appointment and before their booked interpreter arrives. During the appointment, the patient is given detailed advice relating to medication. Without an interpreter, the patient fails to understand dosage instructions and subsequently overdoses at home. Following a lengthy complaints process a settlement is reached but staff in the clinic refuse to see the patient again and suggest they move to another service much further away.

In this scenario, failures of the service resulted in the patient having no option but to complain about the care they received. The punitive response to exclude the patient from future care would constitute victimisation and also possible direct discrimination on the grounds of Race.



Discrimination by association

There is significant evidence that it is not just people with protected characteristics that are treated unfavourably, but family, friends, carers and many others associated with them. This inclusion extends protection from discrimination and unfair treatment to this group of people on the basis that their discrimination and unfair treatment stems from an association with someone with a protected characteristic.

Example:

A family carer of a patient is informed that a community nursing service is being withdrawn. There's been no consultation with patients or their carers and the change will mean a reduction in working hours for the carer to enable her to look after her mum. The removal of the service will also mean she is now required to purchase supplies for her mother's care that were previously provided by the nursing team. A reduction in the carer's working hours means these additional care costs are difficult to meet.

The example shows the requirement for due process in decision making to understand what an impact in service change may be. In this case, an Equality Impact Assessment (EQIA) in advance of the planned withdrawal of service may have highlighted the risk, but as it stands the carer could have a case for discrimination by association.



Discrimination by perception

This is where someone is mistakenly perceived to have a protected characteristic and is treated unfavourably as a result.

Example:

A patient attends for a scheduled procedure requiring inpatient accommodation. Accompanying notes identify the patient as female, but when the ward manager meets the patient they perceive them to be transgender. The manager believes that placement in a separate sex ward may create tensions amongst other patients and so escorts them to a single room in another part of the hospital. While recovering the patient asks why they're not in the ward with the rest of the women - she was worried that she'd been put into a single room because the procedure was more complicated than she'd been told. The manager explains that they have to be careful when they place Trans people in female wards and that having assessed the situation they thought it best to provide separate accommodation. The patient becomes visibly upset and explains they were born female and don't have a Trans history. They go on to say they have experienced this kind of mistake in the past and ask for information about the complaints procedure.

This scenario shows how easy perception-based decisions can go wrong and, if left unchecked, can have serious consequences for the patient and the service.



Identifying Key Areas of Risk

Ideally, every service should be in a position to confidently demonstrate compliance with legislation, but as with any large organisation, there will be functions or services that pose greater risk than others.

Detailed below is a list of possible areas where a review may be in order. This is not an exhaustive list and all services should give consideration to planned reviews on an ongoing basis.

Services with explicit exclusion criteria

The most obvious high risk service areas will be those where service exclusions already operate. For example you may have a service with an age cut-off or one that only delivers services to certain groups of people. Wherever these exclusions exist, risk of discrimination will be high. In the case of age, treatment decisions should be based on biological rather than chronological determinants. Where this is not the case you will need to be able to defend your position (have objective justification). In addition services need to make sure all aspects of the service are accessible and inclusive. For example, a service that decides people who don't have English as a first language shouldn't participate in group work because of the negative impact on English speaking service users will likely be breaching legislation. A safeguarding check should be - if it's a required part of the service it should be available to everyone.



Unreviewed service protocols and policies

Many services may still be reliant upon service arrangements that were perceived to be appropriate before equalities legislation came into force. It's vital that service protocols and policies are reviewed in light of the Equality Act 2010 and the Public Sector Equality Duty. In clinical areas, challenges may have been made to national guidance under equalities law or wider human rights approaches. Make sure you are up to date with any changes and implement them at local level.

Services that are configured on a sex basis

There have been significant changes to the law with regard to the protected characteristic of Gender Reassignment. While the number of Trans people in NHS Greater Glasgow & Clyde is relatively small, feedback from representative Trans groups suggests that public services are still unsure of their legal responsibilities in the provision of goods and services and will often make poorly informed decisions. If you deliver sex-specific services or are responsible for inpatient accommodation you need to know the expectations of balancing the needs of people with the protected characteristic of Gender Reassignment and people with the protected characteristic of Sex. Make sure you know what the law says. If you are unsure, read [NHS Greater Glasgow & Clyde's Gender Reassignment Policy](#) and the [Equality and Human Rights Guide for single or separate service providers](#).



Barriers to access in older buildings

While not exclusively a concern for older buildings, breaches of the Equality Act 2010 tend to be more commonly reported in buildings that were designed and built before the Disability Discrimination Act 1995 came into force. Services need to be confident that barriers to physical access have been removed in accordance with the Act and that the requirement for 'reasonable adjustment' can be evidenced. Note that the definition for reasonable adjustment has changed to strengthen the protection of disabled people and addressing issues should be anticipatory rather than reactive.

Parallel services for people with a protected characteristic

If community engagement and research informs a service of potential barriers experienced by some people, then the service must take the necessary steps to remove those barriers. In some circumstances it may be beneficial to test out new service approaches with a community that shares a protected characteristic to better understand mainstream requirements. This kind of parallel service activity is a learning opportunity but not a sustainable solution. Clear plans must be in place from the outset to factor in exit strategies and knowledge transfer back into mainstream provision. Creating reliance on unsustainable services may result in significant legal challenge at a later date. It also fails to address the core mainstream service barriers that instigated the activity in the first instance. Segregating services by protected characteristic should always be considered as a 'red flag' that we may be breaching legislation.



Services with high demand and throughput pressures

Where patient demand and throughput are both high, there may be an increased risk that required elements of care, central to a person's protected characteristic, are overlooked. For example, in a busy outpatient department staff may look to save time by using a family member or a bi-lingual member of staff to interpret for a patient rather than follow the approved NHSGGC Interpreting Policy and Protocol. If, as a result, the patient is misinformed and experiences poorer health outcomes then NHSGGC may face legal challenge.

Services with high did not attend (DNA) rates

High DNA rates amongst groups with a shared protected characteristic may be indicative of issues with legislative compliance and therefore risk. For instance, low uptake of services by people who require communication support if all invites are made by letter and in small print English or if appointments and cancellations can only be made by telephone.

Services subject to cost savings

Some services may be subject to cost savings leading to a reduction in provision or the removal of aspects of a service. Wherever this is the case, the service should evidence through an Equality Impact Assessment that any service changes will not unfairly impact on groups or individuals with a protected characteristic. For instance, an outpatient clinic plans to remove a domiciliary service and use savings to increase staff available for drop-in appointments. An Equality Impact Assessment shows this may disproportionately impact on people with the protected characteristic of disability who are unable to access an NHSGGC site.



Useful resources

NHSGGC has developed a number of tools, resources, policies and guidance documents to help avoid legislative breach and provide inclusive services for people with a protected characteristic. Listed below are some of the key documents you may want to familiarise yourself to support compliance and meet the wider goal of sensitive and inclusive patient care.

[NHSGGC Gender Based Violence Plan](#)

[NHSGGC Gender Reassignment Policy](#)

[Faith and Belief Communities Manual](#)

[Assistance Dog Policy](#)

[NHSGGC Equality Scheme 2020 – 2024](#)

[Making Fair Financial Decisions](#)

[HR Connect – Equality, Diversity and Inclusion NHSGGC](#)

[NHSGCC Clear to All Policy](#)

NHSGGC Interpreting Policy





Further help

If you are concerned that your service may be at risk of breaching the law or would like to find out more about how you make sure you remain legally compliant, contact the Equality and Human Rights Team for further information or advice.

Tel: **07970 006631** or e-mail Equality@ggc.scot.nhs.uk

