

Equality and Diversity: Less about box ticking and more about human dignity

What is the first thing that springs to mind when asked about Equality and Diversity?

Is it 'oh no we need to write another policy', 'let's tick a box for funding' or 'How does this relate to my organisation?' or perhaps 'We already know about that, move on'.

It's very easy to start seeing Equality and Diversity as just another tick box to satisfy funders; but has your organisation spent any time really thinking about how it affects your organisation – the staff, volunteers, governing body, beneficiaries, clients etc. – on a daily basis?

This fact sheet aims to take you through Equality, Diversity and Human Rights, the legislation and how it affects how your organisational practices. It also tries to look at the issues from the point of view of human dignity.



Southwark

Southwark is a historic borough of London which is currently divided up into four localities: Bermondsey & Rotherhithe; Borough & Walworth; Peckham & Camberwell; and Dulwich. It is also an extremely diverse borough with a young transient population.

For more information, please see [Information about Southwark: Needs and Services](#)

What are Human Rights?

Human Rights are rights that belong to all of us, all of the time (from cradle to grave).

Regardless of your ethical standpoint in relation to unborn children: they do not have human rights as defined by the Human Rights Act, until the day they are born. However, unborn children acquire what is known as 'latent' human rights, which can be more powerful than the rights of the mother. For example, a woman has the right to have a baby and start a family, but that right could be taken away from her if the baby will be born into a 'hostile environment'. On the other end of the spectrum, old age may mean the loss of capacity, becoming frail and dependent on others for personal care.

Human rights inform our understanding of what a human being is and how that human being should be treated from cradle to grave, be it health and social care, housing, education, law, prison etc.

First legally defined in the Universal Declaration of Human Rights (1948) in response to the Holocaust and adapted in Europe as the European Convention on Human Rights (the UK signed up to the convention in 1951), Human Rights regulate the relationship between public authorities (the State, NHS, social services, police, courts, local authorities etc.) and ordinary citizens.

They protect us by placing authorities under a duty of care to protect us with fairness, respect, equality, dignity and autonomy (FREDA principles). In other words, human rights set the basic standards below which public authorities must not go against, not just now but also in the future.

The European Convention has since been enshrined into UK law (1998) and came into force in 2000¹.

Can human rights be taken away?

Human rights cannot be taken away from us but there may be certain circumstance where they are limited or we need to claim them back or ask for help to have them fulfilled. For example, if someone commits a crime; their rights may be limited by a prison sentence. If someone's life is in danger e.g. through domestic violence, the victim can ask for the police to fulfil their duty of care to protect his/her life.

In a liberal society the punishment for not obeying society's rules is to be deprived of your liberty but not at the cost of personal security or other basic civil liberties. There are clear and enforceable rules that apply when human rights are restricted – Proportionate; Lawful; Accountable; Necessary (PLAN).

If a case has exhausted all other legal avenues in the UK (High Court, Court of Appeal and the Supreme Court), a human rights case can be taken to the European Court of Human Rights.

Ranking Human Rights

Age, disability, gender, race and sexual orientation are what's known as 'human condition'.

Religion or belief (even though you might be born into a strong religious household where choice to leave that faith is non-negotiable) is a 'life-style choice'.

In the hierarchy of rights human condition cannot be compromised by someone's lifestyle choice.

Absolute Rights – these rights should never be limited or interfered with by public authorities (in particular the State).

Qualified Rights – these rights can be 'limited' in some circumstances, but any limitation must be Proportionate; Lawful; Accountable; Necessary (PLAN).

1. Right to liberty and security (Article 9)

Right to liberty is a qualified right. Security is in normal circumstances an Absolute Right.

Liberty can be limited:

- Where someone has committed or about to commit a crime
- To protect someone with serious mental health problems
- To protect someone's life (e.g. domestic violence)
- To protect national security

2. Right to respect for private and family life (Article 8)

Qualified Rights.

Can be limited to:

- Protect children and adults from harm
- Protect national security
- Prevent crime
- Protect someone with serious mental health issues

¹ We will update this according to any changes following Brexit in June 2016

- Protect someone else's life

3. Freedom of thought, conscience and religion (Article 9)

Absolute Rights in thought but can be limited in practice.

You have an Absolute Right to think what you like or hold any principle, but when it comes to exercising that thought, conscience or religion, that may be Limited in the interests of public safety, protection of public order or protection of the rights and freedoms of others.

4. Right to Life (Article 2)

Absolute Right.

No one including the government can take your life. It also means you have the right to be protected if your life is at risk; there is a duty of care if someone else's life is at risk.

However, loss of life in self-defence or making a lawful arrest or stopping a riot or uprising is permitted provided the force used is proportionate.

5. Prohibition of torture, inhumane and degrading treatment (Article 3)

Absolute Rights.

- Public authorities have a duty to intervene and stop torture, inhumane or degrading treatment.
- In health and social care, the principle of Dignity and Respect come from this right.

6. Freedom of expression (Article 10)

Qualified Rights.

You can express your views and beliefs, but you have a duty to behave responsibly and to respect other people's rights e.g. not to encourage racial or religious hatred.

7. Prohibition of slavery and forced labour (Article 4)

Absolute Rights.

Your right to be protected against slavery and servitude is absolute. It can never be restricted.

Forced labour is also absolute, but not if it is part of a prison sentence or community sentence.

Equality, Diversity and Multiculturalism

Equality can be seen as the ideal we are working towards for example fairness, freedom from discrimination, access to opportunity.

Diversity covers the various differences found in society (and should not be negative). It may be visible (i.e. age, gender, race) or non-visible (i.e. sexuality, nationality, religion, education, income) but all contribute to the various values and attitudes in society. Some characteristics are protected through the Equalities Act 2010.

Equality is not about being 'politically correct' or often made-up tabloid headlines; it is about achieving social justice at home, work and for the communities we live in or belong to.

For example:

- Old age, frailty and living alone can be a barrier to services unless there is good outreach work to address that isolation.
- Issues related to the additional demands of parenting or being a carer
- Being young might mean it's not 'cool' to attend sexual health clinics/advice centres. So how do we engage young people?
- For some women 'patriarchal' practices might mean imprisonment e.g. forced marriages. How do we ensure that everyone is given the opportunity to live to their full potential?
- Being gay might mean fear of stigma of coming out at work or going to the GP to access services specifically for gay people. How do ensure that our staff and service users are at ease with each other regardless of sexual orientation?
- Being visually impaired, deaf or physically disabled might be a barrier to accessing services. How do we ensure good outreach for those that are housebound for instance?
- Black African and Caribbean people are particularly likely to be subject to compulsory treatment under the Mental Health Act. South East Asian women are less likely to receive timely, appropriate mental health services, even for severe mental health conditions. How do we ensure equality of access and culturally appropriate treatment within the mental health system?

There are two ways of looking at multiculturalism:

- As a lived experience of growing-up and being a part of a diverse community; OR
- As a state-sponsored political process of respect and tolerance.

Multiculturalism as a lived experience of diversity, through mass immigration has evolved slowly across Britain through debate and dialogue opening up a more vibrant and cosmopolitan place with a shared and ever evolving societal value system.

Multiculturalism as a political process, however, undermines the lived experience by locating debate and dialogue in the context of respect and tolerance, and identifying people with specific ethnic/cultural/religious boxes.

When we actively encourage separate lives it often leads to unacceptable patriarchal practices, and those outside of these cultures become cautious or fearful to stand up to such practices.

The Equality Act 2010

The Equality Act 2010 came into force on 1st October 2010. The Act simplifies all previous anti-discrimination legislation to make the law easier to understand and comply with. It brings about comprehensive protection against unlawful discrimination in the workplace, public functions, housing, education, transport and in the provision of services, goods and facilities.

The Act prohibits unlawful treatment on the ground of nine 'protected characteristics'. There are:

- ✓ **Age** – protects people over 18 years of age. Only characteristic that allows employers to justify direct discrimination.
- ✓ **Disability** – physical or mental impairment that has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. The impairment must last at least 12 months. Employers must make reasonable adjustments.
- ✓ **Gender Reassignment** – protection for transsexual people, who propose 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.

- ✓ **Marriage and Civil Partnership** – in the Equality Act marriage and civil partnership means someone who is legally married or in a civil partnership. Marriage can either be between a man and a woman, or between partners of the same sex. Civil partnership is between partners of the same sex.
- ✓ **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 discrimination cannot be treated as sex discrimination
- ✓ **Race** - includes the different elements of colour, nationality, and ethnic or national origin.
- ✓ **Religion or Belief** – includes any religion and 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. 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 weighty and substantial aspect of human life and behaviour.
- ✓ **Sex** - you must not be discriminated against because - You are (or are not) a particular sex; Someone thinks you are the opposite sex. This is known as discrimination by perception; You are connected to someone of a particular sex. This is known as discrimination by association. In the Equality Act sex can mean either male or female, or a group of people like men or boys, or women or girls. The treatment could be a one-off action or as a result of a rule or policy based on sex. It doesn't have to be intentional to be unlawful
- ✓ **Sexual orientation** – defined as: orientation towards people of the same sex (lesbians and gay men); orientation towards people of the opposite sex (heterosexual); orientation towards people of the same sex and the opposite sex (bisexual). The law applies equally whether someone is a lesbian, gay man, heterosexual or bisexual.

Some people feel uncomfortable about declaring their age, religion, disability or sexual orientation – that is their right and it would be unlawful for example to 'out' someone – which can lead to distress or harassment.

Discrimination is the unfair treatment of an individual or group of individuals based on actual or perceived characteristics. There are 5 main types of discrimination: 1. Direct, 2. Indirect, 3. Harassment, 4. Victimisation, 5. Failure to make reasonable adjustments (by an employer) (see the Jargon Buster for descriptions)

Equality and Diversity at its roots comes down to basic human rights and human dignity. Therefore, understanding the essentials and living by these in your organisation is more important than simply putting a policy together to satisfy funders. However, a good policy put in place for the organisation is a good starting point (and legally required).

Effective Equality & Diversity Policy

There are many good reasons to have an effective policy in place: the National Audit Office estimates that not fully using the talents of people from ethnic minorities costs the economy around £8.6 billion annually! (December 2010) and of course organisations providing goods and services to the public sector will be asked to provide evidence of equalities policies being implemented. Other funders may ask for evidence also.

An effective policy:

- ❖ Gives employees the opportunity to achieve their full potential
- ❖ Creates a diverse workforce which takes advantage of a range of talents, experiences, skills and knowledge
- ❖ Helps organisations to be better able to understand the needs of a diverse range of stakeholders
- ❖ Helps recruit and retain staff and volunteers more easily
- ❖ Makes it easier to deal with any grievances or issues that occur
- ❖ Provides opportunities for disabled people in the workforce
- ❖ Helps overcome skills shortages
- ❖ Creates a better work space
- ❖ Creates flexibility in the work place

When creating your Equality & Diversity policy it is essential to ensure that that all staff are aware of what this policy involves and what it means for them – you could involve them by having a day's training before writing it or asking a working group of staff to pull the policy together for example.

At the very least the organisation should provide:

- An explanation of approach to equality and why it's important
- Business case for equality
- Law and what it means in practice
- Roles and responsibilities for staff in making the policy work
- Policy for dealing with bullying and harassment (bullying is not covered by the Equality Act)
- Chance for staff to raise concerns

Implementing good practice also means monitoring the actions taken in relation to the policy to see if it is working. In practice this means gathering information on diversity of potential recruits or existing employees and comparing it against national and local statistics and asking if and why there are any differences. This can be used to encourage more people to apply for posts through taking appropriate actions i.e. consider job sharing and part time posts, advertise more widely, offer work experience opportunities, work more with the community i.e. through volunteer opportunities etc.

For organisations, equality and diversity is thinking about what you, your team, your whole organisation can do to support and engage the community, beneficiaries, possible beneficiaries, funders etc. What could you do more of, or change in order to be more inclusive? Could you translate documents, provide brail or interpreters? How do people within the office act and talk about disability for example? Do attitudes need changing? What reasonable adjustments could your organisation make to have someone with a disability working in your office? Etc.

Public Sector Equality Duty (PSED)

The Equality Act also includes a Public Sector Equality Duty (PSED) which came into force on 5th April 2011. The PSED applies to most public bodies (such as the State, NHS, social services, police, courts, local authorities etc.) including some private bodies that provide 'public functions'.

The purpose of the PSED is to change the culture and practice of public authorities so that they think about and take action on equality as part of their mainstream business in recruitment, employment practice and service access/delivery.

The General Duty in the PSED requires public bodies to have due regard to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Equality Act 2010
- Advance equality of opportunity between people from different groups

- Foster good relations between people from different groups

Having due regard means consciously thinking about the three aims of the general duty as part of the decision-making process. This means that consideration of equality issues must influence decisions taken by an organisation in creating policies, service design, access and delivery:

- How they act as employers
- How they develop, evaluate and review policy
- How they design, deliver and evaluate services
- How they commission and procure from others
- Remove or minimise disadvantages suffered by people due to their protected characteristics
- Meet the needs of people with protected characteristics
- Encourage people with protected characteristics to participate in public life or in other activities where their participation is low.

A quick jargon buster

- **Assumption:** an idea that is taken for granted but not necessarily proven.
- **Bias:** Attitudes or behaviours based on stereotypes.
- **Dignity:** The quality of being worthy or honourable. A state, quality or manner worthy of esteem or respect
- **Direct Discrimination:** occurs when someone is treated less favourable than another person because of a protected characteristic they have or are thought to have (perception discrimination) or because they associate with someone who has a protected characteristic.
- **Discrimination by Association:** this is direct discrimination against someone because they associate with another person who possesses a protected characteristic
- **Diversity:** differences both visible and non-visible that may lead to differences in values etc. such as age, gender, nationality, religion, education, income, sexuality etc. Recognising, valuing and taking into account people different backgrounds, knowledge, skills and experiences.
- **Equal Opportunities:** Commitment to justice, fairness, inclusion, respect and dignity.
- **Equality:** fairness, freedom from discrimination, access to goods and opportunity, being inclusive. Removing barriers which people face due to actual or perceived differences.
- **Harassment:** is 'unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.
- **Indirect Discrimination:** can occur when you have a condition, rule, policy or even a practice in your organisation that applies to everyone but particularly disadvantages people who share a protected characteristic.
- **Oppression:** a state of being kept down by unjust use of force or authority. Systematic subjugation of a group of people by another group of people with access to social power.

- **Perception 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 characteristic.
- **Respect:** An attitude of acknowledging another individual's feelings or interest. Treating others with consideration
- **Stereotype:** a generalised picture of a person, created without taking the whole person into account.
- **Third Party Harassment:** the employer can potentially be liable for harassment of its employees by people (third parties) who are not employees of the organisation such as clients or customers. The employer will only be liable when harassment has occurred on at least two previous occasions, and the employers are aware that it has taken place, and has not taken reasonable steps to prevent it from happening again.
- **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 maliciously made or supported an untrue complaint.

Resources

- The Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/contents>
- Equality Act detailed guidance: <https://www.gov.uk/guidance/equality-act-2010-guidance>
- Equality and Human Rights Commission: <http://www.equalityhumanrights.com/legal-and-policy/legislation/equality-act-2010/what-equality-act>
- Acas: <http://www.acas.org.uk/index.aspx?articleid=3017>
- Citizens Advice: <https://www.citizensadvice.org.uk/discrimination/about-discrimination/equality-act-2010-discrimination-and-your-rights/>
- Southwark Council: http://www.southwark.gov.uk/downloads/download/2921/approach_to_equality_delivering_a_fairer_future_for_all
- The Equality Strategy - Building a Fairer Britain: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85299/equality-strategy.pdf

Support

For support with any issues facing your organisation, please contact the Development Team at Community Southwark: development@communitysouthwark.org or 020 7358 7020.