

SDS Equality Toolkit

Version for SDS staff
and partners





SDS Equality Toolkit Section 1: introduction and how to use

Introduction

This toolkit is designed to support the work of Skills Development Scotland (SDS) colleagues, and people working within SDS's partner organisations such as training providers and employers.

SDS is committed to contributing to a Scotland with a thriving economy, where all individuals can achieve their full potential. This means striving to create workplaces that are inclusive. It also means being aware of the potential for discrimination and the existence of barriers that some individuals face at work.

Who is this toolkit useful for?

Two similar versions of this toolkit exist. They are designed to help two key groups:

- = version 1: aimed at SDS staff and partners – to ensure equality and diversity is considered when working with customers, and also to encourage an inclusive culture throughout SDS as an organisation
- = version 2: aimed at training providers and employers – to give training providers and employers the information and guidance they need to support all individuals

How does this toolkit work?

This toolkit is divided into seven sections. While it is possible that some people will want to read through the whole toolkit, you may find it more useful to refer to different sections at different times. The table below gives you an overview of what each section contains. In each section you will also find a brief guide on how to use that section, as well as some pointers on where to go for further information and support.

	Section name	What's included
	Section 1 Toolkit introduction and how to use	A general overview of the toolkit's purpose and guidance on how to use it.
	Section 2 Why equality is important to SDS	An introduction to equality and diversity, and background information on the approach SDS takes to its equality and diversity work.
	Section 3 The framework for equality and diversity	Key legal information relevant to equality and diversity, providing the basic legal information you need in your role, and a reference point when legal information is required.
	Section 4 Inclusive recruitment	Background information about good practice in recruitment.
	Section 5 Creating an inclusive workplace	Guidance on creating an inclusive workplace, useful for anyone who wishes to make positive changes in the workplace that will enable employees and/or colleagues to thrive.
	Section 6 Guidance on supporting individuals	FAQs: responses to the queries regularly received by the SDS Equalities Team.
	Section 7 Resources	Case studies, a quiz and scenarios that you can use to encourage discussion and understanding of equality and diversity issues within your team/ workplace.

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SDS Equality Toolkit Section 2: why equality is important to SDS

Introduction

What is the purpose of this section of the toolkit?

This section aims to give you a general introduction to the diversity of Scotland's population, the challenges and barriers that exist and which prevent some groups from realising their full potential. It also provides background information on the approach SDS takes to its equality and diversity work.

Who is this section of the toolkit useful for?

This section of the toolkit is useful for anyone who wants to know more about:

- = the diversity of Scotland
- = challenges that exist in terms of equality and diversity
- = why SDS considers equality and diversity to be important
- = the approach that SDS takes to equality work

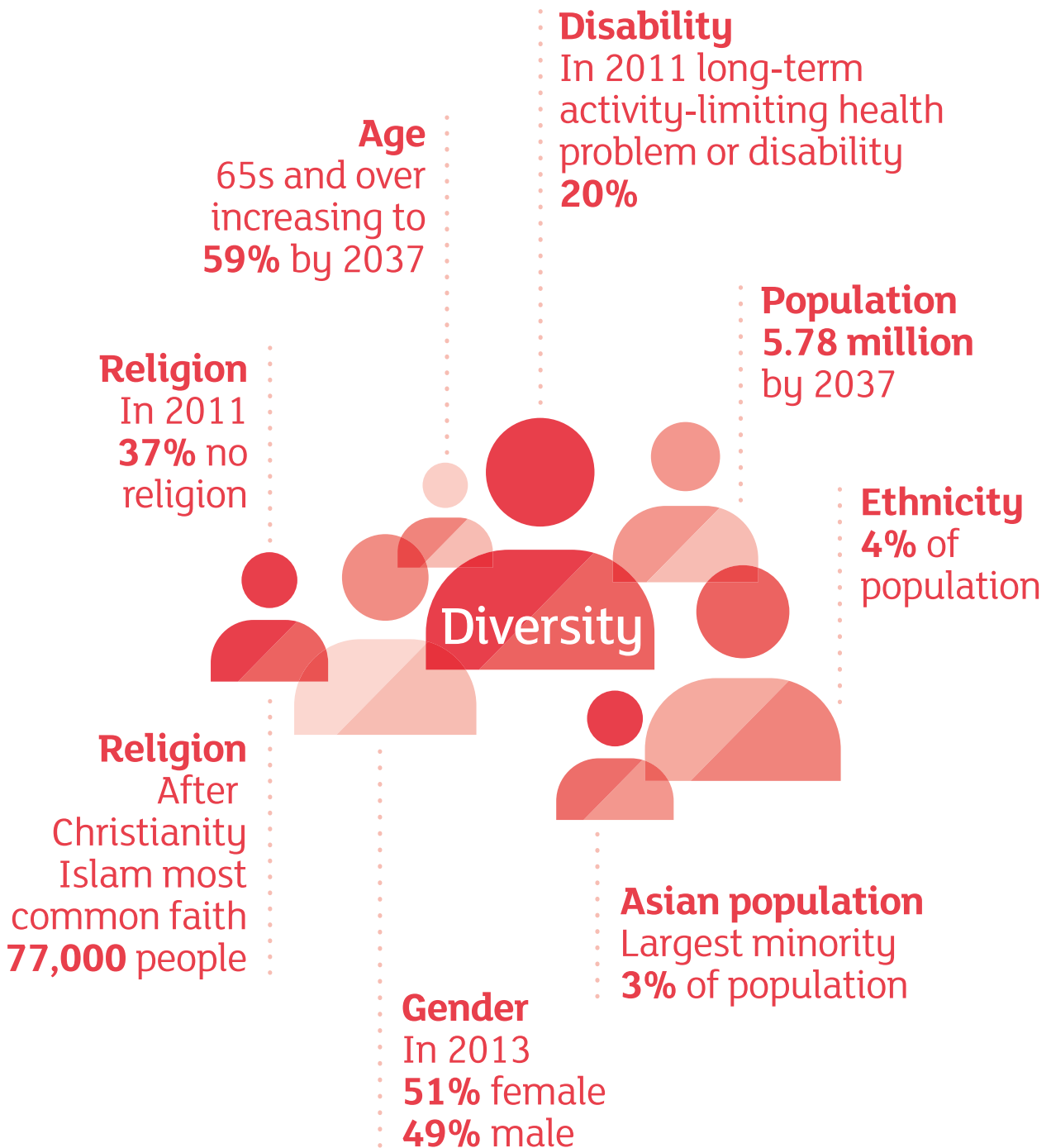
How can I use this section of the toolkit?

You can read through this section of the toolkit for background information about equality and diversity. You can share information from this section when communicating with people who are new to equality and diversity.

How diverse is Scotland?

Let's look at some data from the most recent census to understand the diversity of Scotland's population.

- = **Population:** the estimated population of Scotland on 30 June 2013 was 5,327,700. Current projections suggest that the population of Scotland will rise to 5.78 million by 2037.
- = **Age:** 17 per cent of people in Scotland are estimated to be aged under 16 years, 65 per cent are aged 16–64 years and 18 per cent are aged 65 years and over. By 2037 it is predicted that the population will age significantly, with the number of people aged 65 years and over increasing by 59 per cent, from 0.93 million to 1.47 million.
- = **Disability:** in 2011 the proportion of people in Scotland with a long-term activity-limiting health problem or disability was 20 per cent, the same as reported in the 2001 census.
- = **Ethnicity:** the size of the minority ethnic population in 2011 was just over 200,000 or four per cent of the total population of Scotland; this has doubled since 2001 when just over 100,000 or two per cent of the total population of Scotland were from a minority ethnic group. The picture is different in larger cities where the proportion of the population that belong to a minority ethnic group is higher. For example, in Glasgow 12 per cent of the city's population were from a minority ethnic group in 2011.



- = The **Asian population** was the largest minority ethnic group (three per cent of the total population or 141,000 people) and has seen an increase of one percentage point (69,000) since 2001.
- = **Gender:** in 2013, 51 per cent of Scotland's population were female and 49 per cent were male. This proportion has not changed much since 1947.
- = **Religion and belief:** in 2011 over half (54 per cent) of the population of Scotland stated their religion as Christian – a decrease of 11 percentage points since 2001, whilst 37 per cent of people stated that they had no religion – an increase of nine percentage points.
- = **After Christianity, Islam was the most common faith** with 77,000 people in Scotland describing their religion as Muslim. This is followed by Hindus (16,000), people from other religions (15,000), Buddhists (13,000), Sikhs (9000) and Jews (6000).¹

Why is it important to consider equality and diversity?

This data highlights that Scotland is a diverse country. In its 2015–2017 Equality and Diversity Mainstreaming Report, SDS states that:

“Our vision is for a Scotland where people can realise their potential and where successful businesses support a thriving economy built on fair work. However, this ambition can only be achieved if everyone has access to equal opportunities in the workplace. That is why we are committed to making our contribution to effecting real change in the equality of Scotland's skills system for a highly skilled, fair and inclusive jobs market.”²

The questions we need to ask are: are any groups, including those mentioned in the data above, underrepresented in particular parts of the education system or workforce? Do any groups face barriers or discrimination?

SDS works with a range of individuals who continue to face barriers and discrimination in education, training and employment. For example:

Student attainment

- = At further education level, the proportion of non-disabled students who completed their course was 2.6 percentage points higher than that of disabled students (89.6 per cent and 87.0 per cent respectively). This gap has increased since 2012/13. There is a similar problem in higher education: the proportion of non-disabled students who completed their course was 3.0 percentage points higher than that of disabled students (86.6 per cent and 83.6 per cent, respectively), and the gap has also increased since 2012/13.³
- = There is a degree attainment gap based on ethnicity. Among higher education students in Scotland, the degree attainment gap between white and black qualifiers is 19.1 percentage points.⁴

1 2011 census data: <http://www.gov.scot/Topics/People/Equality/Equalities/PopulationMigration>

2 <https://www.skillsdevelopmentscotland.co.uk/media/40561/edms-2015-final-designed-version.pdf>

3 <http://www.ecu.ac.uk/about-us/scottish-colleges-equality-challenges/>

4 <http://www.ecu.ac.uk/wp-content/uploads/2015/11/Equality-in-HE-statistical-report-2015-part-2-students.pdf>

Occupational segregation

- = Scotland's workforce continues to be segregated by gender, with some sectors and roles occupied predominantly by either men or women. For example:
 - 82.2 per cent of those working in agriculture, forestry and fishing are men
 - 27 per cent of those working in public administration, education and health are men, 73 per cent are women.⁵

Why do we need to do anything about this?

The above highlights the barriers that some individuals and groups still face in education, training and employment. Generally there are three cases for taking action to reduce these barriers and improve equality and diversity in Scotland: the ethical, legal and business cases.

The business case: There are a range of benefits to SDS of ensuring a culture of equality and diversity in all of our services and employment practices.

- = **Recruitment:** by ensuring that discrimination plays no part in how we recruit and operate, we can tap into the broadest talent pool on offer. If we want to encourage the best in others, we must be able to demonstrate that our recruitment practices are fully inclusive.

Our ambition is to be an employer of choice. Demonstrating a commitment to equality and diversity helps employers ensure they provide a positive working environment. Ultimately, the more positive the organisation's image is, the more likely it is that people will want to do business with it.

- = **Retention:** evidence demonstrates that staff in organisations which have made real efforts to tackle equality issues feel more confident and valued in their own working environment, and this in turn leads to higher productivity and improved professionalism in the organisation.

An organisation with human resources (HR) practices that are transparent and seen to be fair can expect low levels of grievance or disciplinary action and a low turnover of staff. Being an exemplary equal opportunities employer is about creating a culture whereby colleagues know that they will be treated with dignity and respect, and that they will be promoted on merit and ability.

- = **Culture:** diversity in the workforce brings creativity – people with different perspectives can bring new ideas and new ways of working. Research has shown that organisations with a diverse workforce are more creative, innovative and dynamic.

⁵ <http://www.closesthegap.org.uk/content/resources/CTG-Working-Paper-8---Shifting-the-Balance.pdf>

The legal case: The UK's equality legislation provides protection and rights for people in relation to discrimination, harassment and victimisation (you can read more about this in section 3 which looks at the framework for equality and diversity). Human rights legislation also provides a set of fundamental rights and freedoms that all individuals are entitled to based on care principles such as dignity, equality and respect.

In section 3 of this toolkit (The framework for equality and diversity) you can find out more about this legislative framework for equality and diversity. What it is important to remember is that as an employer, training provider and a public sector organisation, SDS has legal obligations to ensure that individuals are not discriminated against, harassed or victimised.

The ethical case: The ethical case means giving consideration to equality and diversity because it is the right thing to do. The ethical case emphasises that everyone should be able to thrive in the workplace, and that factors such as gender, ethnicity or the fact that they are disabled should not be a barrier to participation. The focus should be on treating everyone fairly, and creating an inclusive environment.

In the current context it is also valuable to consider that traditional patterns of discrimination and disadvantage mean periods of economic downturn affect those from equality groups differently. Evidence from previous economic recessions suggests that women with caring responsibilities, people from ethnic minorities and disabled people will be disproportionately affected.⁶ This can mean greater levels of poverty, ill-health, unemployment and under-employment, which perpetuates a cycle of disadvantage, increasing the number of people economically excluded. We can see here that there is a connection between the ethical case and the business case, as the barriers faced by some individuals prevents them from thriving and in turn, prevents Scotland from achieving its economic potential.

Given SDS's work with such a wide range of employers and individuals, it is important for us to lead by example and ensure that the support we offer to individuals and businesses as well as to our own colleagues is accessible and appropriate to all.

⁶ EHRC, The equality impacts of the current recession: http://www.equalityhumanrights.com/sites/default/files/documents/research/47_the_equality_impacts_of_the_current_recession.pdf

What next?

This section aimed to give you a general introduction to the diversity of Scotland's population, the challenges and barriers that exist and prevent some groups from realising their full potential.

The rest of this toolkit provides information, guidance and ideas for what you can do in your role to ensure that SDS supports all individuals to thrive.

More information

If you are looking for more information and evidence about the equality and diversity picture in skills, training and education in Scotland, please look at the SDS *Equality and diversity mainstreaming report 2015–2017*: <https://www.skillsdevelopmentscotland.co.uk/media/40561/edms-2015-final-designed-version.pdf>

For more background information on the business case, you may wish to consult this report from the Department for Business Innovation and Skills, The business case for equality and diversity: a survey of the academic literature: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/49638/the_business_case_for_equality_and_diversity.pdf

If you are interested in finding out more about the current picture of equality and diversity in Scotland then you may wish to read the Equality and Human Rights Commission's (EHRC) 2015 report examining the state of equality and human rights in Scotland: Is Scotland fairer? <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/about-commission-scotland/scotland-fairer>

Questions

If you have any further questions, contact the SDS Equalities Team: equality@sds.co.uk



SDS Equality Toolkit Section 3: the framework for equality and diversity

Introduction

What is the purpose of this section of the toolkit?

This section of the toolkit provides the key legal information that is relevant in the area of equality and diversity. It aims to provide toolkit users with the basic legal information that they may need in their role, and a reference point when legal information is required.

Who is this section of the toolkit useful for?

Anyone who wants to:

- = know the basics of equality legislation
- = understand the legal terminology that is used when discussing equality and diversity
- = clarify their responsibilities as an employer

How can I use this section of the toolkit?

This section is a useful reference point if you need any legal information. If you are looking for information about a specific aspect of equality law (eg if you want to know about the specific way in which the law provides protection to disabled people), then you may wish to use the relevant part of this section.

The rest of this section will: look at each of the protected characteristics in detail; clarify the type of conduct that is prohibited under the Equality Act; examine the approaches training providers can take to ensure they are meeting their legal obligations and creating an inclusive environment.

3.1 The Equality Act

The Equality Act 2010 is the central piece of equality legislation in Great Britain (separate equality legislation exists in Northern Ireland). It consolidates and streamlines previous anti-discrimination legislation and places responsibilities on employers and training providers in terms of what they need to do to protect their employees and learners; and to promote equality and diversity in the workplace.

The Act:

- = outlines the nine protected characteristics, which are the grounds upon which discrimination are unlawful
- = defines the different types of discrimination which exist (eg direct discrimination, harassment)
- = sets out the exemptions and exceptions within the legislation where – in limited circumstances – it can be lawful to treat employees and job applicants less favourably.

Furthermore, employers have a responsibility to ensure that their staff do not behave unlawfully and should take all reasonable steps to prevent unlawful acts from happening. **Employees can also be personally liable for any unlawful conduct.**

Example

Employers can take reasonable steps to prevent unlawful acts from happening. This fictitious example provides more context.

Wallace Catering ensures that all of its staff participates in equality and diversity training when they join the organisation. In addition they provide an annual refresher workshop for all employees at the staff away-day. Wallace Catering also introduced an anti-bullying poster campaign and has trained a group of bullying and harassment advisers.

One employee, James, sends emails to his colleague John that contain racist and offensive language. After John complains to his line manager, Wallace Catering immediately conducts an investigation.

These actions by Wallace Catering may enable them to prove that they took reasonable steps to prevent harassment from occurring in the workplace. James could be held personally liable for his unlawful conduct.

3.2 Protected characteristics

This section covers how the Equality Act defines the different protected characteristics and therefore, who is protected by the Act. The focus here is on legal definitions and section 5 of this toolkit (Creating an inclusive workplace) has more detail about how to create an inclusive culture for all individuals.

For some of the protected characteristics, notably disability, gender reassignment and sexual orientation we have gone into more detail to reflect areas where we know SDS staff and partners would value additional guidance.

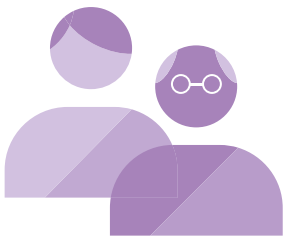
The Act introduced the term 'protected characteristics'. Protected characteristics are the grounds upon which discrimination is unlawful. The nine protected characteristics are:

- = age
- = disability
- = gender reassignment
- = marriage and civil partnership
- = pregnancy and maternity
- = race
- = religion and belief
- = sex
- = sexual orientation

All people are protected by the Act as all individuals demonstrate a range of characteristics.

It is important to note that some protected characteristics are inclusive while others are not. For example, under the characteristic of race, protection extends to all racial groups, and both women and men are included in the characteristic of sex. Other characteristics are exclusive, so non-disabled people are not protected under the Act, and pregnancy and maternity protection only applies to people who are pregnant or who have recently given birth.

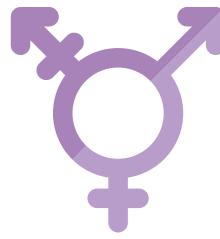
Employers and training providers are responsible for ensuring that employees, apprentices and trainees are not unlawfully discriminated against because of any of these protected characteristics.



Age



Disability



Gender reassignment

3.2.1 Age

People of all ages are protected from discrimination, harassment and victimisation because of their age. In the workplace this means, for example, that one employee should not be treated more or less favourably because they are older or younger than others.

Worth noting: in some situations, age discrimination may be 'objectively justified'. For example, programmes to tackle youth unemployment may legitimately target young people within a certain age bracket even though this discriminates against people in other age groups also looking for work. This is something which is unique to the protected characteristic of age.

An example of this is Modern Apprenticeships where a Scottish Government funding contribution applies only for those aged 16-24. To undertake positive action for individuals in equalities groups whose transition to employment may take longer, SDS is proposing an extension to the contribution rate.

3.2.2 Disability

Under the Equality Act, a person has a disability “if they have a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on his or her ability to carry out normal day-to-day activities”. Substantial is defined by the Act as “more than minor or trivial”.

An impairment is considered to have a long-term effect if:

- = it has lasted for at least 12 months
- = it is likely to last for at least 12 months, or
- = it is likely to last for the rest of the life of the person

Whether a person is disabled is generally determined by the effect the physical or mental impairment has on their ability to carry out normal day-to-day activities (the exception to this is people with severe disfigurement). Normal day-to-day activities are not defined in the Act, but in general they are things people do on a regular or daily basis, for example eating, washing, walking, reading, writing or having a conversation.

People who have had a disability in the past are also protected. This may be particularly relevant for people with fluctuating and/or reoccurring impairments.

For more information on defining disability, you can refer to guidance from the Office for Disability Issues: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/85010/disability-definition.pdf

In its work to create an inclusive environment for disabled colleagues, employees and service users SDS follows the **social model of disability**. According to the social model, disability is caused by the way society is organised, rather than by a person’s impairment. The focus is therefore on removing barriers that may restrict the choices and opportunities available to disabled people. You can find out more about the social model of disability and tools to create an inclusive environment in section 5 of this toolkit (Creating an inclusive workplace).

Worth noting: it is worth noting that the protected characteristic of disability is an exclusive characteristic. This means that only disabled people are protected and disabled people can be treated more favourably than non-disabled people. This is in contrast to the protected characteristic of age, for example, which protects all age groups.

The Equality Act 2010 provides additional protection for disabled people in comparison with the other characteristics by placing a legal obligation on employers to make reasonable adjustments. You can read more about reasonable adjustments later in this section.

3.2.3 Gender reassignment

The Equality Act 2010 protects trans people who propose to undergo, are undergoing, or have undergone a process (or part of a process) of changing their gender. It is important to note that people no longer need to be under medical supervision to be covered by this protected characteristic as the process can be personal and social as well as medical.

Gender identity

It is useful to note the difference between sex and gender: while sex is biologically determined, gender is socially constructed. It is also important to note that there are many nuances to how people experience and express their gender.

While gender identity is subjective and internal to the individual, gender presentation, either through personality or clothing, can determine how a person's gender is perceived by others. Typically, trans people seek to make their gender expression and presentation match their gender identity, rather than their birth sex.

Gender reassignment/transition

Gender reassignment is a personal, social, and sometimes medical process, which is undertaken by an individual to reassign their gender. Anyone who proposes to, starts or has completed a process to change his or her gender is protected from discrimination under the Equality Act.

The term transition is more commonly used than gender reassignment, and describes the permanent full-time adaptation of a person's gender role in all spheres of their life: in the family, at work, in leisure pursuits and in society generally. While some individuals make this change overnight, others go through transition over a period of time.

Language

The Equality Act uses the terms 'gender reassignment' and 'transsexual'. Nevertheless, it is recommended that the more inclusive term 'trans' be used. The term 'trans' can be used without offence but should only be used as an adjective, for example 'a trans student'.

For more information on inclusive language in the area of gender and gender identity, and what employers and service providers can do to create an inclusive environment for trans people, please refer to the section on inclusive language in section 5 of this toolkit (Creating an inclusive workplace).



Marriage



Pregnancy & maternity



Race

3.2.4 Marriage and civil partnership

Legal definition

The Equality Act 2010 makes it unlawful to discriminate against or treat someone unfairly because they are married or in a civil partnership. It is important to note that it is not marital status that is protected, but someone who is married or in a civil partnership. This means that there is no protection for people who are single, divorced, widowed or have dissolved their civil partnerships. Protection is only afforded in employment and not in education or the provision of goods and services. For example, an employer cannot treat two employees differently in the promotions process because their marital status is different. However, there is no protection against being treated differently as a customer in a supermarket because of marital status.

Worth noting: the Equality Act does not provide protection from harassment in relation to marriage and civil partnership. Nor are people protected from discrimination or harassment by perception or association on the basis of marriage and civil partnership. This is because there is not considered to be a need for this form of protection. However, if someone was subject to harassment on the basis of the fact that they were in a civil partnership, they could make a claim of harassment on the basis of sexual orientation.

3.2.5 Pregnancy and maternity

The Equality Act 2010 makes it unlawful to discriminate, or treat employees unfavourably because of their pregnancy, or because they have given birth recently, are breastfeeding or on maternity leave.

There is a specific period of protection for the protected characteristic of pregnancy and maternity, which begins from when the person becomes pregnant and ends when the person's maternity leave ends, or when they return to work (depending on which comes first).

Pregnancy and maternity-related discrimination can occur in employment if a woman is treated unfavourably because:

- = of her pregnancy
- = of pregnancy-related illness
- = she is on compulsory maternity leave (two weeks or four weeks if she is working in a factory)
- = she is exercising her right to take ordinary or additional maternity leave

Pregnancy and maternity-related discrimination can occur outside the workplace (eg in education) if a woman is treated unfavourably because:

- = of her pregnancy
- = she has given birth (within the past 26 weeks)

The Equality Act 2010 explicitly protects women from unfavourable treatment because of breastfeeding.

Worth noting: the protection provided by the Equality Act on the basis of maternity and pregnancy differs in a number of ways from the protection given to other characteristics. In particular, unlike for the other protected characteristics there is no need for a woman to show that she has been treated **less favourably** than another member of staff who is not pregnant – she simply needs to prove that she has been treated unfavourably because of her pregnancy or maternity. Whereas, for example, a man claiming discrimination on the basis of sex would need to prove that he had been treated less favourably than a woman.

For more information on the specificities of protection on the basis of pregnancy and maternity, you can consult the Advisory, Conciliation and Arbitration Service (ACAS):

<http://www.acas.org.uk/index.aspx?articleid=5271>

3.2.6 Race

The Equality Act 2010 provides protection for individuals from discrimination, harassment and victimisation because of their race. The term may include the following:

- = colour
- = nationality
- = ethnic origins
- = national origins

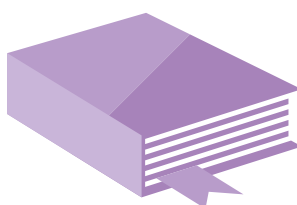
For example, people are protected because they are black or white, are Chinese or are citizens from China. Protection is afforded to all people as everyone has a race.

Protection on the grounds of nationality is subject to compliance with immigration rules.

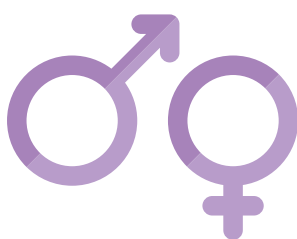
Racial hatred legislation

In addition to the Equality Act, the Public Order Act 1986 contains specific criminal offences related to the intention of stirring up racial hatred or if someone is likely to stir up racial hatred. This includes threatening, abusive or insulting words or behaviour, materials and public performances.

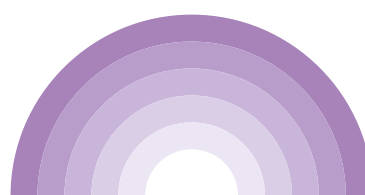
Worth noting: everyone is protected under the characteristic of race.



Religion & belief



Sex



Sexual orientation

3.2.7 Religion and belief

Legal definition

The Act protects people with and without religion or belief.

The legal definitions of religion and belief are:

- = religion: any religion or reference to religion, including a reference to a lack of religion
- = belief: any religious or philosophical belief or reference to belief, including a reference to a lack of belief¹

Religion or belief should be taken to mean the full diversity of religious and belief affiliations within the UK, including non-religious and philosophical beliefs such as atheism, agnosticism and humanism.

Previous case law has noted that to qualify as a protected belief, a person's belief must:

- = be genuinely held to be a belief, and not simply be an opinion or viewpoint based on the present state of information available
- = be a belief related to a weighty and substantial aspect of human life and behaviour
- = attain a certain level of cogency, seriousness, cohesion and importance
- = be worthy of respect in a democratic society and not incompatible with human dignity and/or conflict with the fundamental rights of others²

¹ Equality Act 2010: <http://www.legislation.gov.uk/ukpga/2010/15/section/10>

² This definition comes from a 2009 Employment Appeal Tribunal decision, and more information is available here: http://www.acas.org.uk/media/pdf/d/n/Religion-or-Belief-and-the_workplace-guide.pdf

Worth noting: religious hatred legislation In addition to the Equality Act 2010, the Racial and Religious Hatred Act 2006 made it an offence to stir up religious hatred. The offence of stirring up religious hatred is committed when a person uses threatening words or behaviour, or displays written material, which is threatening and they intend to use this to stir up religious hatred.

It is also useful to be aware of the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012, which aimed in particular to tackle sectarian behaviour at football games, acknowledging the history of sectarianism in Scotland. In addition to offensive behaviour at football, the Act aims to prevent the communication of threatening material, in particular when it incites religious hatred.³ Employers and employees need to be aware of the fact that almost all forms of communication (with the exception of unrecorded speech), are covered by the act – including social media.

3.2.8 Sex

Both women and men are protected from discrimination under the protected characteristic of sex. It is worthwhile noting that currently the UK only recognises two legal sexes: female and male. This means that this protected characteristic does not provide protection for people who identify as gender-fluid or have a non-binary gender identity (ie they do not identify as being male or female). In some circumstances, these individuals may be protected by the protected characteristic of gender reassignment.

Worth noting: both men and women are protected under the characteristic of sex.

3.2.9 Sexual orientation

Sexual orientation means a person's sexual orientation towards people of the same sex, opposite sex or both. Lesbian, gay, bisexual and heterosexual people are all protected under the Equality Act.

While heterosexual, lesbian, gay and bisexual people are all protected under the Equality Act, ACAS research indicates that most complaints of sexual orientation discrimination involve homophobic bullying and harassment. In the workplace homophobic bullying and harassment generally take the form of verbal abuse, exclusion from conversations, name-calling and threats.

³ Lord Advocate's Guidelines on the Offensive Behaviour at Football and Threatening Communications (Scotland) Act 2012: http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20111101_LA_draft_guidance.pdf

3.3 Prohibited conduct

In this section you can read about the various forms of conduct that are prohibited under the Equality Act.

3.3.1 Direct discrimination

Direct discrimination is when a person is treated less favourably than others in the same circumstances because of a protected characteristic.

Discrimination in the workplace might take place in respect of recruitment, assessment, training, promotion or the ways in which work is allocated. Discrimination in training delivery might include refusing someone an apprenticeship placement or refusing to take on a learner because of a protected characteristic. People in all of the nine protected groups are protected from direct discrimination.

Examples

- = An employer excludes women from certain work functions because they assume that she will not fit in since all the other people doing that job are men.
- = An employer decides not to offer a disabled person an interview for an apprenticeship because they are concerned that it will be too costly to accommodate their needs.

3.3.2 Discrimination by association and perception

Direct discrimination can take place because of a protected characteristic that a person does not actually have. This can be either discrimination by association or discrimination by perception.

Discrimination by association occurs when someone experiences discrimination because they associate with someone with a particular protected characteristic, even if they don't possess the characteristic themselves.

Example

- = A staff member who has a disabled child is turned down for a promotion. A less qualified colleague who also has a child but whose child is not disabled is given the promotion because the employer thinks that the employee with the disabled child will need more time off.

Discrimination by perception occurs when someone is discriminated against because they are perceived to have particular protected characteristic even if they don't.

Example

- = An employer assumes that an applicant for an apprenticeship is gay (even though the learner is not) and rejects their application thinking that they won't fit into the group of current apprentices.

3.3.3 Indirect discrimination

Indirect discrimination occurs when a way of doing something (or in legal language: a provision, criterion or practice) appears to be neutral, but its impact particularly disadvantages people who share a protected characteristic.

In some situations, indirect discrimination can be justified if there is a very good reason for the treatment. In order to work out what a 'very good reason' is, you need to respond to the following legal question: is the discrimination a proportionate means of achieving a legitimate aim?

Examples

Let's look at two examples of indirect discrimination, one that counts as unlawful discrimination and another for which different treatment could be justified as a proportionate means of achieving a legitimate aim.

- = A training provider states that all applicants must have academic qualifications that were gained in the UK. They do not consider how other qualifications may be comparable to UK qualifications. This is likely to be indirect discrimination on the basis of race, as people from outside the UK are more likely to have non-UK qualifications.
- = An employer advertises a job which requires ten years of work experience. There are likely to be candidates who are disadvantaged by this requirement, for example a female candidate who does not meet the requirement because she took time away from work to bring up her children, or a younger candidate. This requirement would therefore constitute indirect discrimination, unless the employer is able to prove that the job cannot be done without this length of work experience (eg through a shorter period of work experience and some training).

Worth noting: the specifics of the protected characteristic of pregnancy and maternity mean that it is not possible to bring an indirect discrimination claim. Instead a person would need to bring a direct discrimination claim or alternatively a claim of sex discrimination.

3.3.4 Harassment

Harassment occurs when a person engages in: "unwanted conduct which is related to one or more of the relevant protected characteristics and which has the purpose or the effect of violating the dignity of another person or creating for that person an intimidating, hostile, degrading, humiliating or offensive environment."⁴ Under the Equality Act, unwanted conduct of a sexual nature also amounts to harassment.

4 Equality Act 2010.

An individual can also bring a claim of harassment even if the unwanted behaviour is not specifically directed at them. For example, a colleague may be witnessing another colleague being harassed. The direct recipient (sometimes called 'the target') may not want to complain about harassment but the person witnessing it may feel that their dignity is also being violated by the behaviour so they could bring a complaint.

The perceptions of the recipient of the harassing behaviour are particularly important, and it is important to understand this in order to deal appropriately with any claims of harassment. When someone makes a complaint about harassment employers must take the complaint seriously. It is not the perpetrator's intention that matters, but the impact it had on the individual who was the target of the behaviour.

Examples

- = There is inappropriate banter about sexuality that makes a gay member of staff feel uncomfortable. This could be harassment related to sexual orientation.
- = A member of staff in the company canteen makes racist comments about black people. These comments are not directed at a particular individual, but the comments create a hostile and intimidating environment. This could be harassment related to race.

Worth noting: the terms bullying and harassment are often used together. The key distinction is that there is a statutory definition of harassment under the Equality Act 2010 and that harassment refers to conduct related to a protected characteristic. For more information on harassment and bullying in the workplace, refer to section 5 of this toolkit (Creating an inclusive workplace).

3.3.5 Victimisation

Victimisation takes place where a person is treated less favourably because they have asserted their rights under the Equality Act, for example if they have made a formal complaint about harassment in the workplace on the basis of their sex. Victimisation can also take place if a person supports another person to assert their rights and is treated less favourably as a result of providing this support. This could occur if someone provided evidence to support their colleague's claim of harassment.

Examples

- = A learner alleges that they have encountered racism from a member of staff, and that as a result, other members of staff have started to ignore them.
- = A staff member is called a 'trouble maker' because they raised an issue of how the core-hours policy was detrimental to those with dependent children.

3.3.6 Hate crimes, hate incidents and reporting

Police Scotland define hate crime as a crime motivated by malice or ill will towards a social group because of their:

- = race
- = sexual orientation
- = religion/faith
- = disability
- = gender identity⁵

Examples of hate crimes include:

- = verbal abuse
- = threatening or offensive emails
- = the use of social networking sites to threaten, harass or offend individuals or groups
- = vandalism of equipment used by disabled people to aid mobility or otherwise provide support
- = negative, abusive or threatening behaviour relating to cultural or religious dress and artefacts, including pressure to dress in a certain way

Police Scotland considers hate crime a high priority and they aim to:

- = increase the confidence of victims to report hate crimes/incidents
- = adopt a multi-agency response to dealing with hate crime
- = increase action against perpetrators through proactive policing and robust enforcement
- = continually review incidents and crimes to identify current and new trends, and target resources accordingly

Police Scotland record and monitor hate crimes, and wish to make it as easy as possible for victims to report such crimes. They also record hate incidents. A hate incident is an incident which is perceived by the victim or any other person to be motivated by hate or prejudice, but does not constitute a criminal offence. While only hate crimes may be prosecuted, police forces also monitor hate incidents. There is considerable evidence that perpetrators of hate incidents often move on to committing hate crimes, and so this monitoring allows the police to take steps to prevent an escalation into criminal acts.

If you need to report a hate crime, or provide information to others about doing so, then consult the information provided by Police Scotland: <http://www.scotland.police.uk/contact-us/hate-crime-and-third-party-reporting/>

⁵ What is hate crime?: <http://www.scotland.police.uk/keep-safe/advice-for-victims-of-crime/hate-crime/what-is-hate-crime/>

3.3.7 Discrimination arising from disability

In addition to the prohibited conduct listed above, there is a further form of discrimination: discrimination arising from disability. This occurs when a disabled person is treated unfavourably because of something connected to their disability.

Example

- = A member of staff is dismissed because of poor attendance, where the absence is on account of treatment that the employee is undergoing in order to manage a mental health condition.

In such cases of discrimination, the employer can be held liable if they know, or could reasonably be expected to know, that the employee has a disability.

Further information of when an employer is deemed to know about an employee's disability can be found in sections 6.21 and 6.22 of the EHRC's Employment Statutory Code of Practice:

http://www.equalityhumanrights.com/sites/default/files/publication_pdf/employercode.pdf

3.3.8 Failure to make reasonable adjustments

Employers and training providers have a duty to make reasonable adjustments to ensure they accommodate disabled people in all aspects of employment or in their training. Making reasonable adjustments like this ensures that workplaces and ways of working do not disadvantage people with a disability. Failure to make such adjustments constitutes disability discrimination.

Changes can be made in three different ways:

- = changing the way things are done, for example, allowing changes to working times so that an employee with a mobility impairment does not have to use public transport during rush hour
- = making changes to the physical environment, such as providing way-finding signage, power-assisted doors and appropriate lighting
- = providing auxiliary aids and services, such as providing a British Sign Language (BSL) interpreter for a deaf learner to attend workshops or assistive software for an employee with a visual impairment

Further information: SDS employees should refer to the SDS Reasonable Adjustments Process.

3.4 How employers can meet their legal obligations

There are a number of ways that employers can ensure they are meeting their legal obligations under the Equality Act, and work to create a more diverse and inclusive workplace.

3.4.1 Pre-employment questionnaires

The Equality Act 2010 makes it generally unlawful to ask questions about an employee's disability or health before a job offer is made, for example questions relating to an employee's sickness record. This is to prevent disability or health information being used to sift out job applicants without first giving them the opportunity to show they have the skills to do the job.⁶

Nevertheless, asking job applicants to complete a monitoring form can help an employer to monitor: who has applied for jobs, who has been shortlisted and who has been selected. This enables employers to identify if there are any groups that are not applying to work for them, or if any groups are facing barriers that are preventing them from being successful in the recruitment process.

If an employer does ask equality monitoring questions it is vital that these questions are kept separate from the individual's application and that the information is not taken into consideration in the recruitment process, and this is particularly true for questions about disability and health.

Employers may find it useful to consult the EHRC's guidance on workforce monitoring:

<http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/equality-policies-training-and-monitoring/workforce-monitoring>

For more detailed guidance on pre-employment questions related to health and disability specifically, employers may wish to consult the EHRC guidance:

http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/pre-employment_health_questions_guidance_for_employers_final.pdf

3.4.2 Positive action

Under the Equality Act, employers and training providers can take steps to proactively promote equality and diversity. One of these provisions is positive action, which means that an employer can take action to support employees or job applicants that it thinks are at a disadvantage because of a protected characteristic.

Examples of actions which employers may take include:

- = targeting training at specific disadvantaged groups
- = mentoring for specific groups when a need is identified
- = providing crèche facilities
- = open days which are held exclusively for groups that are underrepresented in the workplace
- = bursaries to obtain qualifications in a profession

⁶ EHRC, Pre-employment health questions: http://www.equalityhumanrights.com/sites/default/files/documents/EqualityAct/pre-employment_health_questions_guidance_for_employers_final.pdf

It is important to distinguish between positive action and positive discrimination. In the UK, positive action is a lawful way for employers to work with particular groups to address their underrepresentation within the workplace. Positive discrimination is when, for example, an employer appoints someone to a role or a college offers a student a place on a course solely on the basis of a protected characteristic, for example because they are a woman. Positive discrimination is unlawful in the UK.

Example

- = A training provider collects and monitors data on the number of apprentices within engineering, construction and beauty therapy subjects. Their data highlights that women and black and minority ethnic (BME) learners are underrepresented within engineering and construction, and men within beauty therapy apprenticeships.

The provider undergoes a further research exercise, consulting current staff and learners within these areas. The research highlights some key issues to participation for these groups, such as how potential learners receive information about career choices, how specific opportunities are promoted, and the attitudes of staff working within these areas.

The provider works with a range of employers to address these challenges. This includes auditing images used in marketing materials, implementing a training programme for employers specifically looking at challenging stereotypes, and embedding themes around gender and race within their curriculum.

The providers and employers also take positive action measures targeting underrepresented groups by providing taster sessions open only to these learners. These sessions showcase successful apprentices from these groups and provide learners with information about the range of career pathways available to them.

Positive action in recruitment

The Equality Act extends the use of positive action in the workplace so that employers will be able to address underrepresentation when, for example, recruiting staff. Where two candidates are equally qualified, underrepresentation could, if desired, be used as part of the decision-making process.

Example

- = Two equally qualified and experienced applicants, one male and one female, apply for a job on the senior management team. At interview, both candidates are equally appointable. The rest of the senior management team are men. In this case, it would be lawful to use gender as a tipping factor in the decision-making process.

Example of positive action at SDS

A positive action which SDS has taken is to sign up to the **Positive about Disabled People (Two Ticks) scheme**. This means that we guarantee that we will interview any disabled people who meet the person minimum requirements of the role when they apply for a job with us. We display the 'two tick' symbol (below) in our job advertisements.



By joining this scheme, we commit:

1. to interview all disabled applicants who meet the minimum criteria for a job vacancy and to consider them on their abilities
 2. 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
 3. to make every effort when employees become disabled to make sure they stay in employment
 4. to take action to ensure that all employees develop the appropriate level of disability awareness needed to make these commitments work
 5. 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
-

3.5 The public sector equality duty

The Equality Act introduced a new duty on public bodies – the public sector equality duty (PSED) – and SDS is subject to this.

The PSED has a general duty, which requires all public bodies to think about how they can:

- = eliminate discrimination
- = advance equality of opportunity
- = foster good relations in different groups of people with protected characteristics

3.5.1 Scotland-specific PSEDs

Underpinning the general duties, there are specific duties, which are different for Scotland, Wales and England.

In Scotland, the specific duties require public bodies to:

- = report on mainstreaming the PSED
- = publish equality outcomes every four years and report progress every two years
- = gather and use employee information, including publishing employment data on the composition of the workforce across all protected characteristics in relation to recruitment, retention and development every two years
- = publish gender pay gap information every two years and an equal pay statement
- = publish statements on equal pay (including equal pay policy and occupational segregation) for gender, disability and race every four years (the first requirement for disability and race from 2017)
- = publish the above information in a manner that is accessible
- = assess and review policies and practices: for more information on how to do this please refer to the information on equality impact assessments included in section 5 of this toolkit (Creating an inclusive workplace)
- = consider the general duty in relation to their award criteria and conditions of contract in public procurement

3.5.2 Reporting progress

In line with the Scotland-specific duties, SDS regularly publishes a mainstreaming report. SDS has chosen to report on progress towards its equality outcomes within this mainstreaming report. The report includes SDS's equality outcomes, employee information, an equal pay statement, pay gap information and a statement of compliance with the requirements of the legislation in relation to the procurement process.

The most recent version of this report is available on the equality and diversity section of the SDS website: <https://www.skillsdevelopmentscotland.co.uk/about/policies/equality-and-diversity/>

SDS will continue to publish a mainstreaming report, and a report on progress towards achieving its equality outcomes, at least every two years.

3.5.3 Gender pay gap

Specifically, PSED requires that public bodies with more than 150 full-time staff must publish gender pay gap information every two years. This should be based on the percentage difference between men and women's average hourly pay (excluding overtime). SDS has published the information within its equality mainstreaming report.

In order to comply with the PSED, SDS is also required to use the evidence we have to consider the impact on equality of all new policies and practices. This includes any reviews, changes or revisions to existing policies and practices, services and provisions.

3.5.4 Equality impact assessments

In response to the Scottish-specific duty to assess and review policies and practices to ensure they do not discriminate against particular groups, SDS has developed a process for how this is done. This is called the equality impact assessment (EqIA) process. For more information on EqIAs please refer to section 5 of this toolkit (Creating an inclusive workplace).

3.5.5 Further information on the PSED

The EHRC is the equality regulator for Great Britain. It has produced an essential guide to the PSED in Scotland, alongside six further guides which provide additional practical advice. They are accessible on the EHRC website: <http://www.equalityhumanrights.com/about-us/devolved-authorities/commission-scotland/public-sector-equality-duty-scotland/non-statutory-guidance-scottish-public-authorities>

3.5.6 Training providers and the PSED

It is important to note that while some training providers may not be covered by the PSED, SDS has a duty to ensure that the training providers with which it has contracts comply with equality law.

The PSED in Scotland states a specific requirement that SDS considers our criteria and conditions of contract in public procurement, including the national training programmes (Modern Apprenticeships and Employability Fund).

What next?

This section of the toolkit aimed to provide the key legal background on equality and diversity as relevant in Scotland. If you require more legal information, then you may wish to:

- = speak to a member of the SDS Equalities Team: equality@sds.co.uk
- = review the information about equality provided by organisations such as ACAS and EHRC, and some links to relevant resources are included below
- = it is useful to bear in mind that for some issues that occur in the workplace it is necessary to seek legal advice

More information

If you are looking for more information on employers' responsibilities under equality legislation, then it may be useful to consult the EHRC's guides: <http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/guidance-employers>

ACAS also provides employer guides: <http://www.acas.org.uk/index.aspx?articleid=3017>

Questions

If you have any questions about the toolkit, contact the SDS Equalities Team: equality@sds.co.uk



SDS Equality Toolkit Section 4: inclusive recruitment

Introduction

What is the purpose of this section of the toolkit?

This section of the toolkit aims to provide SDS staff with an overview of good practice in recruitment.

Who is this section of the toolkit useful for?

There are three key groups that will find this section of the toolkit useful.

SDS staff involved in recruitment

This section of the toolkit may be useful for anyone who is participating in recruitment within SDS and wants to know more about how to give consideration to equality and diversity during the recruitment process. However, this section is not intended as a comprehensive guide to how recruitment works within SDS. If you are an individual involved in recruitment within SDS, please contact HR in the first instance.

SDS staff who advise employers

This section of the toolkit will also be useful to individuals within SDS who provide advice to employers and training providers about the approach they take to recruitment.

SDS staff who advise customers

If you provide advice on careers and/or training to SDS customers the information in this section could be useful. It will enable you to provide advice about what they can expect during the recruitment process, and how they should be treated during that process.

How can I use this section of the toolkit?

The recruitment process involves a variety of stages – from drafting the job description through to making an offer – and there is value in considering equality and diversity at each stage in the process. It is therefore worthwhile reading through this entire section in order to understand why and how equality and diversity can be taken into account. However, each sub-section is clearly titled so you may also wish to identify and read particular sections, for example, the section on unconscious bias if you are going to be sitting on a recruitment panel.

Inclusive recruitment

An organisation's recruitment and selection processes have a significant impact on how recruitment is managed. Having robust recruitment and selection policies, procedures and practices means that an organisation draws on applicants from as wide a pool as possible and so opens up the organisation to becoming a more diverse workplace.

A diverse group of staff will bring different experiences, perspectives and approaches to the work of the organisation, and research indicates that this will make the workforce more creative and innovative.

Beyond these benefits of giving consideration to equality and diversity, all employers also need to ensure that they are meeting their obligations under the Equality Act throughout the recruitment process. This is the case:

- = whether the organisation is large or small
- = whatever the sector
- = whatever recruitment processes an organisation follows

The rest of this section of the toolkit will take you through each of the key stages in the recruitment process and highlight what needs to be considered in terms of equality and diversity. This flowchart gives you an overview of the whole process:

Stage		Factors you need to consider
Step 1	Preparation for recruitment	Equality monitoring Job description Person specification
Step 2	Advertising your vacancy	Language of your job advertisement Application process
Step 3	Selecting candidates and preparing for interviews	Criteria for shortlisting candidates
Step 4	The interview process	Diversity of the interview team Organising an accessible venue Considering appropriate dates Interview questions and criteria Selection process: making the decision Considering the possible impact of unconscious bias
Step 5	Making a job offer and pre-employment preparation	Making a job offer Giving feedback Immigration and the right to work

Step 1: Preparation

When recruiting new members of staff employers need to give adequate time and consideration to preparing the process, specifically equality monitoring, job descriptions and person specifications. This will help to ensure that they are practising inclusive recruitment.

Equality monitoring

Before starting the recruitment process it is valuable for employers to review the current diversity of their workforce. If this highlights that some specific groups are underrepresented within the workplace, then they need to consider how to encourage a diverse group of people to apply for the vacancy.

It is good practice to ask candidates to complete an equality monitoring form when they apply for a role. As noted in section 3 of this toolkit (The framework for equality and diversity), it is vital that this information is kept separately from the main application. The information gathered should not be used to make a decision about a candidate, rather it is a useful tool for employers to understand how fair and inclusive their recruitment practices are.

SDS asks all job candidates to complete a standard equality monitoring form as part of the online recruitment process.

If you are looking for general information on template equality and diversity monitoring forms, then you can review the information provided by ACAS:

<http://www.acas.org.uk/media/pdf/k/t/Delivering-equality-and-diversity-summary-guide.pdf>

Job description

Job descriptions not only set out the work that will be expected to be carried out, they also provide a framework to recruit against. As a minimum the job description should include:

- = Job title
- = Department/section
- = Main purpose of job
- = Key tasks/main duties
- = Responsible for
- = Responsible to

It should also contain a reference to promoting equal opportunities and working in line with the organisation's equal opportunities policy. When an organisation is planning to advertise a vacancy they should consider whether the job can be done part-time or full-time, and whether flexible working is possible.

Person specification

This sets out the competencies required for the job, that is, the skills, knowledge, experience, etc, that the 'ideal candidate' would possess. It is at this stage that very subtle discrimination can creep in as appointment panels seek, often unwittingly, to appoint in their own image, or to select someone who will 'fit in' with the existing team. For more information on this, please consult the section on unconscious bias later in this section.

Comparing all applicants to the same measurable criteria as set out in the person specification means an employer can objectively justify why they have chosen a particular candidate. Employers need to ensure they can provide evidence of this if challenged.

As a minimum person specification should cover:

- = Qualifications
- = Attainments/competencies
- = Previous experience
- = Experience required
- = Commitment to the organisation's values and principles
- = Special aptitudes (eg oral or written skills, etc)
- = Physical abilities, but only if a justifiable requirement for the job

The person specification should make it clear whether each of the criteria is essential or desirable. It is also important that employers give careful consideration to whether job descriptions could directly or indirectly discriminate against potential applicants. Here are some examples of how this could happen.

- = If an employer requests a particular number of years of experience for a role they may rule out younger people who have the necessary skills, but have not been able to demonstrate this over an extended period. Unless an employer can objectively justify why a specific number of years of experience are required then it is advisable to replace years of experience criteria with a requirement for proven skills in that area.
- = Stating that applicants 'must be physically fit' or 'hold a clean driving licence' may discriminate against disabled applicants. If a role does have particular physical requirements then it is important that these are clearly described so as to provide disabled candidates with the opportunity to assess whether they would be able to meet the criteria, and whether reasonable adjustments might be possible.

Step 2: Advertising a vacancy

Language of your job advertisement

Here are some factors that it is valuable for employers to consider when advertising their vacancies.

- = Ensure the language used is clear and accessible. Don't use abbreviations or jargon.
- = Include a statement about the physical accessibility of your building.
- = Think laterally about where to display the advertisements. For example, think about using local or national press, community radio stations, library noticeboards, existing equality networks.
- = Make use of community groups/publications which engage with underrepresented groups. For example, if you wish to increase applications from specific BME communities, then you can target BME-specific publications and local community groups.
- = Consider positive action through specific and targeted recruitment events.
- = Be aware of the sensitivities for some cultural groups and liaise with support organisations targeted at specific groups, for example, Muslim women.

When advertising and promoting job opportunities it is important that employers include a statement in the advertisement that makes clear their commitment to promoting equality and valuing diversity. If particular groups (eg women, disabled people) are underrepresented in an organisation then employers should consider including a positive action statement in the job advertisement. Here is some suggested text:

'We welcome applications from everyone irrespective of gender and ethnic group but, as women and members of ethnic minority groups are currently underrepresented at this level of post, we would encourage applications from members of these groups. Appointment will be based on merit alone.'

More examples of positive action

Section 3 of this toolkit (The framework for equality and diversity) provides information about the legal context for positive action in employment. Here are some examples of positive action that employers may wish to consider.

- = Targeted recruitment advertising campaigns, such as recent advertisements run online by Shell to target working parents seeking careers in the oil and gas industry in line with their family friendly working policies:
<http://www.shell.co.uk/careers/experienced-professionals/family-friendly-careers.html>
- = Holding **careers open days** in familiar community venues for targeted groups of people. For example, prior to the formation of Police Scotland, Lothian and Borders Police Force regularly held open evenings in lesbian, gay, bisexual, and trans (LGBT) venues in Edinburgh to promote career opportunities specifically to people who identify as LGBT people.
- = Offering **work experience placements**: Equate works with engineering and construction employers to run work experience placements for young women.

- = **Additional targeted support** such as arranging mock interviews or the opportunity to practise for aptitude tests (eg the Skills Learning Exercise test for the construction industry), or accessing funding which can help to address barriers such as the ASN access Fund for training providers.
 - = **Offering a mentor** – offering a mentor or body at the start of someone’s Modern Apprenticeship could provide the support needed for them to successfully complete their MA, in particular if they have complex needs. The Scottish Mentoring Network provides further information: <http://scottishmentoringnetwork.co.uk/>
-

Application process

Application packs should contain as a minimum:

- = the job description
- = the person specification
- = the application form
- = the equality monitoring form
- = information about the timescale for the selection process

Application forms should be simple and to the point. The information collected should focus on the knowledge and skills that are relevant to the role.

Step 3: Selecting candidates and preparing for interviews

The purpose of shortlisting is to identify all the applicants whose skills, experience and qualifications match those that have been identified as being necessary to do the job.

When shortlisting employers need to be sure that they are basing their evaluation of candidates on a comparison of the information the applicant has provided in their application against the criteria set out in the person specification. They should not consider information they happen to have about that person’s previous employment or educational history.

At the shortlisting stage it is also good practice to ask all applicants invited for interview if they need any reasonable adjustments. As discussed in section 3 of this toolkit (The framework for equality and diversity), the Equality Act 2010 places a duty on employers to make reasonable adjustments to accommodate the needs of disabled employees so that they are not put at a disadvantage in comparison with individuals who are not disabled. This duty to make reasonable adjustments also applies during recruitment. For example, an employer may need to change the venue of an interview to ensure it is accessible for wheelchair users.

If you are providing advice to an SDS customer about the interview process, it will be valuable to explain to them what their rights are in terms of reasonable adjustments.

Step 4: The interview process

There are a number of important considerations that employers need to give to equality and diversity at the interview stage.

- = How diverse is the interview team? If they are all the same gender and ethnicity will this give a message to the candidates about who might be seen as 'fitting in'?
- = Are all interview panel members aware of the legal requirements surrounding recruitment? The interview panel should have appropriate knowledge/training on equality legislation.
- = Is the venue accessible and have candidates been provided with the opportunity to request reasonable adjustments? This could mean the provision of a note-taker or British sign language (BSL) interpreter.
- = Interview questions should be agreed by all members of the interview panel beforehand. It is important that all questions are relevant to the role and are not discriminatory. For example, interviewers should not ask candidates about plans to have children or about health conditions.
- = Assessing candidates: it is good practice to create a scoring grid for candidates before the interview. This will enable each of the panellists to objectively assess the candidates. After the interviews are completed panellists can agree a quantitative score for each interviewee rather than relying on a gut reaction or sense of who is the best candidate.
- = Interview dates: it is important that interview dates do not clash with any significant cultural or religious festivals. The Interfaith Calendar is a useful tool for this:
<http://www.interfaithcalendar.org/>

Selection process: making the decision

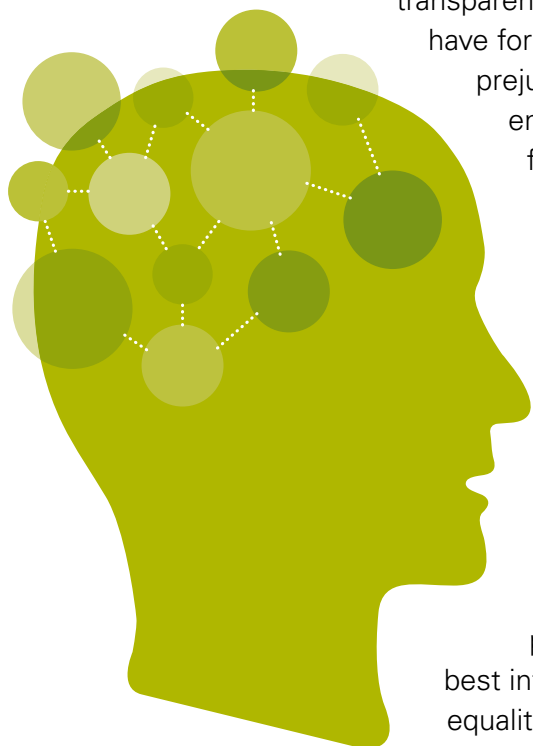
Here are some guidelines for the decision-making process in recruitment.

- = The decision should be made only after all candidates have been interviewed.
- = All interview panel members need to have an equal voice in the decision-making process.
- = The panel must consider each candidate against the competencies which were agreed prior to the interview and the successful candidate should be the one that best matches these identified competencies. No other information about the candidate, including any prior knowledge or opinion concerning a candidate, should be considered.

This is why the preparation and use of assessment forms/scoring grids in advance can make the process fairer and more transparent. It is important that employers are aware that their decisions in recruitment can be challenged using the Equality Act and evidence of fairness and transparency, such as scoring grids, enable employers to respond appropriately if challenged.

Food for thought: acknowledging the potential for unconscious bias

While it is vital to take steps to ensure that the recruitment process is fair and transparent, it is also worthwhile to acknowledge the potential we all have for being biased against certain individuals. No one is free from prejudice and bias, and acknowledging this from the outset can enable a recruitment panel to support each other in reaching the fairest decision.



Unconscious bias refers to a bias that we are unaware of, and which happens outside of our control. It is a bias that happens automatically and is triggered by our brain making quick judgments and assessments of people and situations, influenced by our **background, cultural environment** and **personal experiences**.

Unconscious bias can creep into our attitudes towards other people and can influence our decisions about who we relate to positively or negatively in many aspects of our lives. It is particularly relevant in recruitment, selection and promotion processes, as this is an area where, despite our best intentions, it can be exercised. Evidence suggests that despite equality legislation and policy, organisations still find it difficult to recruit or promote people from groups that are different from the norm for their organisation or for particular roles.

What is unconscious bias?

Unconscious bias is rooted in our attitudes and will have been shaped by our socialisation, our values and beliefs, and our experience.

At a very general level, unconscious bias can be seen as a way of functioning in a complex world. We don't start at first principles every time we meet a new person or situation. We are conditioned to expect certain ways and patterns of behaviour. Our personal biases and prejudices and our stereotyping of people provide us with an unconscious shorthand way of making a split-second decision about people and situations; are we safe; do we connect; will we get on?

The impact of unconscious bias

Unconscious bias can lead to us making assumptions about people, often based on very little information, or carrying positive or negative stereotypes of people because of their membership of a particular group.

Stereotypes and prejudices are not fixed. We can shift them slightly or re-arrange them completely – often because of new knowledge or experience of a particular group. What we don't seem to be able to do is get rid of them completely.

Evidence suggests that all too often, recruitment panels are still recruiting in their own image. Most recruitment teams would no longer ask the question that was acceptable ten years ago, “How do you think you will fit in with the team?”. We know now that the decisions made in answer to that type of question will be based on all kinds of assumptions and value judgments. We know that if the team in question share a range of characteristics, (let’s say white, male, over 50 and they all love playing golf) the chances of someone completely different (let’s say black, female, under 40 with no positive experience of a golf club) joining the team and being seen as “fitting in” are quite slim. However, although we know better than to ask the questions, it seems that we still make the judgments, based on unconscious bias.

Dealing with unconscious bias

Equality legislation and policy can contribute to determining our behaviour in the workplace but the culture of the organisation is not determined by that alone. Unconscious bias plays its part, often in subtle ways, in determining who gets listened to, who gets promoted and who is valued. If we are committed to valuing diversity then we need to examine the way that unconscious bias impacts on us as individuals and our organisations.

In situations where we have power we need to try to make our unconscious bias more conscious. We need to be aware of our deeply held beliefs and how they might influence our decision-making. In the workplace our power might be related to our role, for example, on an interview panel, or it might be the power that we get (at an unconscious level) from being part of the dominant or majority group.

We also need to have processes and checks and balances within the workplace to ensure that the impact of unconscious bias is mitigated or minimised. This could include staff training, monitoring of recruitment and selection process, workforce analysis and staff stress/satisfaction surveys.

More information

If you are interested in finding out more about unconscious bias and how it can impact on recruitment, then here are some resources.

The Royal Society has produced a short animation that explains the concept of unconscious bias:
<https://www.youtube.com/watch?v=dVp9Z5k0dEE>

Facebook has provided a range of videos online that enable their staff – and others – to recognise their unconscious biases and the negative impacts they can have in the workplace:
<https://managingbias.fb.com/>

The Chartered Institute of Personnel and Development (CIPD) has made available an article about reducing the impact of unconscious bias in the workplace:
<http://www.cipd.co.uk/NR/rdonlyres/666D7059-8516-4F1A-863F-7FE9ABD76ECC/0/Reducingunconsciousbiasorganisationalresponses.pdf>

Step 5: Making a job offer and pre-employment preparation

Making a job offer

Offer letters should be written in an accessible format, and should cover the following points:

- = the job title and the offer of that job
- = any conditions (pre- or post-) that apply to the offer
- = the terms of the offer: salary, hours, benefits, pension arrangements, holiday entitlement, place of employment, etc
- = the date of starting, and any probationary period
- = what action the candidate needs to take, for example, returning a signed acceptance of the offer, agreement to references, any date constraints on acceptance
- = if the letter is to form part of the contract of employment, it should say so

It is important to remember that employment contracts are legal documents and have validity even before the candidate has commenced employment.

Giving feedback

It is good practice to offer feedback to unsuccessful candidates. Though this is a challenging task, it is made easier when employers are confident that their processes were fair and rigorous. Furthermore, it will be made easier if the candidate is also confident that their experience was one where they were treated fairly and courteously and given a chance to do their best. Taking notes and using a scoring process during interviews will facilitate the process of providing feedback to candidates.

The Data Protection Act allows candidates to ask to see interview notes where they form part of a set of information about the candidate, for instance, the application form, references received, or the full personnel file if the candidate is already working for the organisation.

Immigration and right to work

The following information will be useful for anyone advising SDS customers who are not UK citizens on the training and employment opportunities open to them.

It is important not to make any assumptions about an individual's right to work in the UK based upon factors such as their nationality, accent or the languages they speak when considering someone for a job.

It is a requirement to ask all individuals to provide evidence of their right to work in the UK before you employ someone so don't make any assumptions when offering someone a job.

Migrant workers

Migrant workers make up an important part of the UK workforce and UK society more broadly. Employers need to ensure they have an understanding of the legal framework for employing

individuals from outside the UK, as well as the steps they can take to ensure they are creating a supportive and inclusive workplace for migrant workers. The government has provided guidance on this, which can be accessed here: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/426964/an_employers_guide_to_right_to_work_checks_may_2015_final.pdf

As stated by ACAS, “the basic rule of thumb when recruiting new staff is that you should treat migrant workers in exactly the same way as British workers”.¹ Migrant workers have the same protection against discrimination as their British counterparts.

Migrant workers’ rights to work in the UK can depend on a number of factors, including their immigration status and country of origin. In order to ensure they are meeting their legal obligations under immigration regulations, employers should request evidence of the right to work in the UK from all potential employees.

Refugees and asylum seekers

It is useful to highlight the distinction between refugees and asylum seekers. Although the terms are often used together there are important differences between asylum seekers and refugees in terms of rights to work, education, benefits and funding.

Refugee status: if someone has applied for asylum and has been successful in their application then they have leave to remain in the UK; this may be refugee status, humanitarian protection or discretionary leave to remain. Such individuals are **refugees**. Refugees can work, undertake Modern Apprenticeships and volunteer, and they are entitled to benefits and Student Awards Agency Scotland (SAAS) funding. In short, refugees have the same entitlements as other UK residents.

Asylum seekers: if someone has applied for asylum in the UK, but a decision has not yet been reached by the government, then they are an asylum seeker. Asylum seekers do not have the right to work in the UK, unless the Home Office has granted permission, which happens only in exceptional circumstances. They are also not able to register as unemployed.

For more detailed information on how to support refugees and asylum seekers, please refer to section 6 of this toolkit (Guidance on supporting individuals).

European Economic Area nationals

European Economic Area (EEA) nationals (ie from one of the EEA countries) have the right to ‘freedom of movement’ throughout the EEA, and this includes the right to live in the UK in order to:

- = work in self-employment
- = work as an employee
- = look for work (as a jobseeker)

The list of countries that are members of the EEA does periodically change. For example, in 2014 Croatia joined the EEA. It is therefore worthwhile to check the UK government information to confirm whether a particular individual has the right to live and work in the UK based upon their EEA status. This information is available here: <https://www.gov.uk/eu-eea>

¹ <http://www.acas.org.uk/index.aspx?articleid=3702>

Recognising and converting qualifications

It may be valuable to highlight to individuals the value of getting qualifications that were awarded in another country recognised in the UK and/or converted to their UK equivalent. There are formal institutions and processes that exist to support individuals with this conversion process. In the UK this is managed through the National Recognition Information Centre (NARIC).

There are SDS staff who are able to provide support with the qualification recognition process through NARIC. To access this support, contact the SDS Equalities Team: equality@sds.co.uk

Recruitment checklist

Here is a recruitment checklist that can be shared with employers involved in recruitment. You may also wish to use this if you are involved in recruitment at SDS.

Key questions to consider in recruitment

Has this been considered?

Did you include statements about welcoming applicants from a wide range of backgrounds in the job advertisement?

Yes No

Have you advertised the job as widely as possible?

Yes No

Is everything mentioned in the job description or person specification essential to doing the job?

Yes No

Have all members of the interview panel received training/briefing on the relevant aspects of the equality legislation and are they aware of the importance of avoiding discriminatory language and making inappropriate assumptions during the interview?

Yes No

Are panels aware of the concept of unconscious bias and how it can affect how each of us evaluates candidates during recruitment?

Yes No

Have you checked whether or not any of the candidates require additional support for the interview, such as an induction loop, or large print on any written materials that they will be required to read?

Yes No

Is the interview room accessible for all?

Yes No

Were the interviews all scored carefully and the decision to award the job made on the basis of these results?

Yes No

If requested, could you demonstrate that all candidates were treated fairly and were given an equal opportunity to present their skills and qualifications?

Yes No

Were all candidates given the opportunity to receive constructive feedback about their interview?

Yes No

What next?

This section aimed to provide you with the key information it is important to consider when involved in any – or all – stages of the recruitment process.

More information

SDS follows its own recruitment process, and you may wish to consult the SDS recruitment authorisation process as a starting point. For more general information on inclusive recruitment you can consult the following resources.

In 2015 ACAS published a guide for employers on inclusive recruitment. It can be accessed here: <http://www.acas.org.uk/index.aspx?articleid=1371>

The EHRC also has guidance for employers on how to meet their obligations under equality legislation in the area of recruitment. This can be accessed here:

<http://www.equalityhumanrights.com/private-and-public-sector-guidance/employing-people/recruitment>

The Scottish Refugee Council provides an employment toolkit that contains valuable information on employment rights and advice on enhancing employability skills for refugees: http://www.scottishrefugeecouncil.org.uk/assets/0000/0194/SRC_Employment_Toolkit_update_2010.pdf

Questions

If any questions remain unanswered after you have referred to relevant sections of this toolkit, contact the SDS Equalities Team: equality@sds.co.uk



SDS Equality Toolkit Section 5: creating an inclusive workplace

Introduction

What is the purpose of this section of the toolkit?

This section of the toolkit aims to provide you with information about how SDS promotes an inclusive workplace for its employees, and a general overview of good practice in creating an inclusive working environment.

Who is this section of the toolkit useful for?

This section of the toolkit will be particularly useful for SDS people managers who have a responsibility for creating an inclusive working environment for those they manage. It may also be useful for members of the SDS team who provide guidance to employers on how to create an inclusive workplace environment.

How can I use this section of the toolkit?

This section of the toolkit takes a general and inclusive approach to equality and diversity. This means that rather than identifying ways to support specific individuals, we provide recommendations for how creating an inclusive workplace environment will benefit everyone. Nevertheless, there is also guidance on how to support particular groups and individuals, acknowledging the specific barriers some people face in the workplace.

Therefore it is worthwhile to read through this entire section in order to get a general overview of how to create an inclusive environment in the workplace.

If you have any remaining questions about how to support specific individuals then you may find the answers in section 6 of this toolkit (Guidance on supporting individuals), which contains responses to some of the most frequently asked questions that the SDS Equalities Team responds to. The team can also be contacted at equality@sds.co.uk

5.1 Introduction

SDS's vision is for a Scotland where everyone can realise their potential and where successful businesses support a thriving economy built on fair work. SDS also acknowledges that for this to happen everyone needs to have access to equal opportunities in the workplace. SDS is therefore committed to creating an inclusive workplace for its employees, and supporting the creation of inclusive workplaces amongst its partner organisations. Let us now look at the various ways we can create an inclusive workplace.



5.2 Inclusive language

5.2.1 General principles

Language changes over time. Our idea of what is polite and acceptable changes too. Furthermore, there is not always agreement on the appropriate language to use, especially in relation to some equality and diversity issues. Nevertheless, there are some general principles that you can follow to facilitate inclusive communication. These principles will benefit everyone within your organisation.

- = Use plain English in all your communications. Avoid using metaphors, jargon and slang.
- = Don't change the way you address someone because of your own assumptions about their communication skills.
- = Use a normal tone of voice, don't patronise or talk down to someone.
- = Don't worry so much about the language you use that it prevents you from communicating. If what you say does offend or upset someone, apologise and be open to changing your language.
- = Never attempt to speak or finish a sentence for the person you are talking to.
- = Speak directly to people, even if they have an interpreter or companion with them.
- = Not everyone takes the same approach to non-verbal communication and eye contact. Show flexibility and adapt your communication style as relevant.

Although following a set of general principles for communication enables an organisation to be inclusive for all, there are some areas related to equality and diversity where it is valuable to give additional and specific consideration to the language we use. Let's consider the language we use in relation to: race and ethnicity, gender and gender identity, disability and sexual orientation.

5.2.2 Language, race and ethnicity

The important issue to think about in relation to race is: what are we trying to say and why? If it is necessary to mention race, nationality or ethnicity at all then we need to be clear about what it is we are trying to express.

Race

When considering the language around race it is valuable to start from the assumption that 'race' is a social construct. It has been found that genetic differences within ethnic groups are actually greater than the genetic differences between different ethnic groups. Therefore there is no biological basis for defining differences by race.

However, the language around race and ethnicity enables us to articulate and discuss inequalities and discrimination that exist within society caused by prejudiced attitudes to some people based upon their 'race'. For example, when discussing advancing equality in education, it is relevant to talk about the barriers and discrimination faced by minority ethnic groups.

Ethnicity

Race and ethnicity are often used interchangeably but it is useful to be clear about the difference. As described above, race is a socially constructed term without biological merit that has historically been used to categorise different groups of people based on perceived physical differences.

Universities Scotland refers to a 1983 House of Lords decision that suggests an ethnic group would have the following features:

- = a long shared history of which the group is conscious as distinguishing it from other groups and the memory of which it keeps alive
- = a cultural tradition of its own including family and social manners, often but not necessarily associated with religious observance
- = a common, however distant, geographical origin
- = a common language and literature

It is important to remember that everyone has an ethnicity and 'white British' is an ethnic group. Bhavnani et al (2005, p. 213)¹ point out that it is common in British culture for 'ethnic' to be wrongly used as synonymous with non-white or not-western, for example with 'ethnic clothes' or 'ethnic restaurants'. This is why it is not appropriate to use the term 'non-white'; people do not wish to be described as 'non' anything.

When discussing the barriers and discrimination faced by some groups within society, it can be valuable to use the term 'minority ethnic'. This is preferable to 'ethnic minority'; putting the word 'minority' first highlights the fact that everyone has an ethnicity and the issues being referred to relate to minority groups in a UK context and the discrimination and barriers that they face. Nevertheless, the term 'minority ethnic' has its own limitations, in particular the fact that it implies that this is a homogeneous group.

¹ Reena Bhavnani, Heidi Safia Mirza, Veena Meeto, Tackling the Roots of Racism: Lessons for Success, Policy Press, 2005.

5.2.3 Language and gender

It is important to use gender-neutral language in publications unless the sex of the subject is relevant in the context. Although historically 'man' has been used as a synonym for 'human' (eg human progress vs man's progress), research indicates that the average reader's tendency is to imagine a male when reading 'he' or 'man', even when the author intends the passage to be gender neutral.

There are number of ways of ensuring that language is gender neutral.

- = Use the plural form. 'Employees can monitor their progress' can replace 'An employee can monitor his progress'.
- = Use 'you'. The sentence, 'Suppose that you have difficulty recalling your mobile phone number' can replace 'Suppose that a person has difficulty recalling his mobile phone number'.
- = Eliminate the pronoun. 'The student is typically the best judge of the value of extra practice sessions' can replace 'The student is usually the best judge of the value of his extra practice sessions'.
- = When talking about colleagues and customers, remember that the terms 'boys' and 'girls' refer to people who are not yet adults. It is more appropriate to refer to people as 'men' and 'women'.

Language and gender identity

Adopting gender neutral language also enables you to be inclusive of trans people.

'Trans' is an inclusive term used to describe those who identify themselves as transgender. Recently some people and organisations have added an asterisk as an additional symbol of inclusion of any kind of trans and non-binary gender presentation, and so you may see the formulation: trans* person.

It is important to note that language in relation to trans people is varied, shifting and sometimes contested. This is because perceptions and understanding of gender identity continue to change. Some people may find the language used in this toolkit in relation to trans people acceptable; others may not. It is therefore important to be open to adjusting the language you use.

Names and pronouns

A person who is transitioning may request that other people address them by a new name and the appropriate pronoun. Persistently using an incorrect pronoun or name could constitute harassment under the Equality Act 2010. If you are unsure which name or pronoun to use then the best approach is to ask politely.

If you are uncertain what gender someone identifies with, then you can use gender-neutral language until you know what terms they use.

Stonewall provides guidance on the use of gender-neutral language:

http://www.stonewallscotland.org.uk/sites/default/files/lgbt_inclusive_communications.pdf

5.2.4 Language and disability

SDS promotes the social model of disability (which you can read more about later in this section) and therefore refers to disabled and non-disabled people. This is in contrast to referring to disabled and able-bodied people, which implies that disability lies in the physical body rather than the social environment.

The most common barrier to effective communication with disabled people is the ignorance or assumptions. Some common examples of this are: ignoring the disabled person altogether (as in “does John take sugar?”) or talking loudly to people regardless of their hearing capacity.

Other potential communication difficulties can be addressed in a number of ways and specialist help is available. This could mean providing a reader service for blind people, assisting an individual who has dyslexia through the use of computer equipment, using Minicomms to enable people who are deaf to use a telephone, and installing loop systems in training rooms to assist individuals who are deaf.

When considering any changes in order to support communication it is vital to consult the relevant individual or individuals. They have been communicating all their life, and will likely have experience of what does and does not work well.

For a more detailed list of appropriate/inappropriate terminology please see Glasgow Centre for Inclusive Living’s Social Model and Language Factsheet:

<http://www.disability.co.uk/sites/default/files/resources/SocialModelLanguage-newlogo.pdf>

5.2.5 Language and sexual orientation

As with other equalities issues, using appropriate language is important when talking about sexual orientation. There are many words used to describe people’s sexual orientation, but it is worth noting that the term ‘homosexual’ is seen as outdated. The terms ‘lesbian’, ‘gay’ or ‘bisexual’ are more inclusive.

Inclusive language: top tips

This section of the toolkit provides you with detailed information on the consideration you need to give to the language you use in relation to disability, race and ethnicity, gender and gender identity, and sexual orientation. Here are some general top tips that you may find useful.

Gender-neutral language

If you don't know what gender to use when speaking to someone – either about them or about their family members – then a good approach is to use gender-neutral language until you are clear about their gender. Here are some gender-neutral equivalents that you may find useful:

- = boyfriend/girlfriend → partner
- = husband/wife → spouse
- = mum/dad → parent
- = son/daughter → child
- = he/she → they
- = his/her → their

Getting it wrong

If you use the wrong language and someone corrects you then the best approach is to apologise sincerely and move on. Don't dwell on the issue.

Language is a contested area and it keeps changing

Not everyone agrees on the appropriate language to use, and this includes members of some minority groups. This may mean that people challenge the language you use in your communications. When this happens it can be useful to explain how your organisation decided to use certain language and/or terminology. At times it may also be valuable to consult with key stakeholders on the language you are using in your communications. For example, if you are releasing information about the support you provide to disabled apprentices, then it will be important to consult with disabled apprentices.

You also need to be prepared to update the language you use. Language which is generally considered acceptable today may no longer be seen as appropriate in the future. For example, in the past it was considered acceptable to use the word 'transsexual', whereas now the more inclusive term 'trans' is generally seen as more appropriate.

Labels and collective terms

It is important to remember that aspects of a person – such as their gender identity, their sexual orientation or the fact that they are disabled – constitute only an aspect of that individual.

It is therefore important to use words as descriptions, not as the name for a group of people. For example, use 'disabled people' rather than 'the disabled' as a collective term.

Avoid negative language

Avoid using negative language when talking about an aspect of a person's identity. This is particularly important in the area of disability. For example, avoid using the terms 'suffers from' or 'wheelchair bound'.

Language and race

There are a number of terms in use around race and ethnicity. Using these terms depends on the context in which you are using them, why you are using them and how you have decided which terms to use. A key point to remember is that the term 'coloured' is outdated, and viewed as offensive to many black people.

Recently the term 'black' has also been challenged by some communities in Scotland as unhelpful.

You can refer to the following resource for more background and guidance:

<http://www.universities-scotland.ac.uk/raceequalitytoolkit/terminology.htm>

Sources and further information

These tips on inclusive language are based upon guidance from a number of organisations. You can access more information from the following resources:

- = Stonewall Scotland guide on lesbian, gay, bisexual and trans (LGBT) inclusive communications: https://www.stonewallscotland.org.uk/sites/default/files/lgbt_inclusive_communications.pdf
 - = Office for Disability Issues and DWP, Inclusive language: words to use and avoid when writing about disability: <https://www.gov.uk/government/publications/inclusive-communication/inclusive-language-words-to-use-and-avoid-when-writing-about-disability>
 - = British Sociological Association guides to equality and diversity and language: <http://www.britisoc.co.uk/the-bsa/equality.aspx>
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5.3 Inclusive employment practices

It is important to ensure that terms and conditions of employment do not discriminate and facilitate an inclusive working environment. There are a number of ways in which an employer can be inclusive in their employment practices.

- = Equal pay: equal pay ensures people with different protected characteristics are paid the same for like work, work rated as equivalent, or work of equal value.
- = Managing leave for parents and carers: putting in place procedures to facilitate people combining work with caring for dependants.
- = Managing disability-related absence: putting in place procedures for disability leave and disability-related sickness that don't disadvantage disabled staff.
- = Flexible working: enabling people to work flexibly and thrive at work.

Let's now examine some of the key approaches to fostering an inclusive work environment, and in particular what SDS does as an employer to create an inclusive workplace where all its employees can thrive.

5.3.1 Flexible working

Providing employees with the opportunity to work flexibly creates an inclusive environment for all staff, including those with dependants.

There are a number of ways that flexible working can be introduced to the workplace including:

- = flexible working patterns
- = flexi-time
- = home-working
- = job sharing
- = annualised hours
- = part-time working

SDS has a dedicated hours of work and flexible working policy, which sets out standard working hours within the organisation and how SDS manages any variance to working hours for members of staff.

What does flexible working mean at SDS?

Flexible working requests can include a change to the hours a team member works, a change to the pattern of hours worked or a change to the location where they perform some or all of their work.

Who has the right to request flexible working arrangements within SDS?

This policy states that all employees have the right to request flexible working provided they have:

- = 26 weeks continuous service
- = not submitted a flexible working application in the previous 12 months
- = agency workers (with the required service) have the right to apply for flexible working where they are returning from a period of parental leave
- = SDS's flexible working policy does not apply to contractors

How does SDS deal with flexible working requests?

SDS considers requests for flexible working on an individual basis, taking into account the impact to the organisation, the department and colleagues. SDS takes all reasonable steps to accommodate an employee's request for flexible working, and does not unlawfully discriminate against an employee.

- = SDS employees wishing to apply for flexible working should follow the Flexible Working Guidance for Colleagues

- = SDS line managers dealing with a request for flexible working should refer to the Flexible Working Guidance for Managers

5.3.2 Leave for those with dependants

There are a number of forms of leave that employees are entitled to request in relation to maternity, paternity, being a parent and having caring responsibilities. ACAS provides comprehensive guidance for employers on all these types of leave: <http://www.acas.org.uk/index.aspx?articleid=1362>

Some of the most important forms of leave with which you may need to be familiar, either as an SDS employee or in your role managing other employees are:

- = maternity leave and pay
- = shared parental leave and pay
- = adoption leave and pay
- = paternity leave and pay

Managing pregnancy and maternity in the workplace well is a particularly important way for employers to contribute to an inclusive workplace environment. Research by EHRC indicates that many women still face barriers and discrimination in their working lives linked to pregnancy and maternity. Here are some of the key findings from the EHRC research.

- = Around one in nine mothers (11 per cent) reported that they were either dismissed, made compulsorily redundant, where others in their workplace were not, or treated so poorly they felt they had to leave their job; if scaled up to the general population this could mean as many as 54,000 mothers a year.
- = One in five mothers said they had experienced harassment or negative comments related to pregnancy or flexible working from their employer and/or colleagues; if scaled up to the general population this could mean as many as 100,000 mothers a year.
- = Ten per cent of mothers said their employer discouraged them from attending antenatal appointments; if scaled up to the general population this could mean up to 53,000 mothers a year.²

As part of their broader project focused on pregnancy and maternity, EHRC has produced a series of video case studies highlighting how employers can benefit from retaining mothers in the workplace. These video case studies can be accessed here:

<http://www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace/video-case-studies>

² <http://www.equalityhumanrights.com/about-us/our-work/key-projects/managing-pregnancy-and-maternity-workplace>

What forms of leave does SDS offer to its staff?

SDS sets out the entitlements of pregnant employees, new mothers, adopters and their partners in its maternity, adoption and shared parental leave policy. This policy also provides details of the process for applying for all of these forms of leave.

5.3.3 Further guidance on inclusive employment practices

UK government guidance on flexible working: <https://www.gov.uk/flexible-working/overview>

ACAS guidance for employers on handling flexible working requests in a reasonable manner: <http://www.acas.org.uk/media/pdf/f/e/Code-of-Practice-on-handling-in-a-reasonable-manner-requests-to-work-flexibly.pdf>

5.4 Tools for creating an inclusive workplace: equality impact assessments

An equality impact assessment (EqIA) is a way of systematically and thoroughly assessing the effects that a proposed or existing policy is likely to have on different equalities groups. The PSED obliges SDS and other public bodies to conduct an EqIA of new and revised policies and practices.

By going through the EqIA process and progressing actions which are identified during this process SDS can be confident that the services it provides are as inclusive as possible and reach the widest possible customer groups. Similarly the EqIA process helps SDS as an employer to ensure that its policies do not have an adverse impact on protected groups of employees, and that SDS promotes equality at every opportunity.

The SDS aim of providing a personalised service based on individual need fits with the sentiment of the Equality Act. As outlined in section 3 of this toolkit (The framework for equality and diversity), the legislation protected certain groups as they have a history of discrimination, harassment and, from an SDS viewpoint, may need more support entering learning or employment.

The EqIA process means systematically assessing the actual and/or likely effects of a policy on people who share a protected characteristic and then implementing the resulting recommended actions.

SDS provides guidance on conducting an EqIA for project managers as well as a template.

Here is a brief overview of the EqIA process at SDS. Please note that this diagram is only intended to give you a general overview, and more detailed information follows.

Step in the SDS EqIA process	Step in the SDS EqIA process	Factors to consider
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Step 1	Summary of policy	<p>Take some time here to consider the aims of your policy. Are there any groups which may not engage with your policy?</p> <p>If your policy is targeted at a specific group – is there a reason for this? Does provision exist for those groups that are excluded? Would it be possible to widen the reach of your policy?</p> <p>Think about the objectives of your policy. Are all groups likely to achieve the same outcomes? Will any need additional support to achieve these outcomes? Are there any indirect outcomes of your policy that may affect different equality groups?</p>
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Step 2	Evidence and consultation	<p>What information did you use when developing your policy? Can this information be broken down by equality group?</p> <p>If your policy is targeted – what information do you have to support this decision?</p> <p>Does the information you used tell you about the different needs, experiences and outcomes of equality groups?</p> <p>If not, which parts of this information would be useful for you and how do you intend to gather this information? For example, Scottish government statistics on the local population, focus groups/surveys with customers.</p>
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Step 3	Assess the impact of introducing the new policy on different equality groups	<p>Consider the impact of your policy on each of the equality groups in turn – are there any beneficial impacts for this particular group? Are there any adverse impacts for this particular group?</p> <p>If you have highlighted an area of potential or likely adverse impact – how will you monitor to see if this is the case in practice? What action will you take to reduce this adverse impact?</p> <p>Take this opportunity to note how you will promote equality.</p>
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Step 4 Monitoring and review

It is likely that you will already have processes in place to monitor/evaluate your policy. How will you ensure this information can be broken down by equality group?

What steps are you taking to ensure that no data is published that could potentially be used to identify specific individuals?

How often will monitoring processes be reviewed to ensure they are gathering appropriate and useful information?

Who will be responsible for this?

Step 5 Action plan

Throughout the EqlA process you will have identified actions – these should be listed with the name of a responsible person and a deadline for completion.

These actions will be monitored by the SDS Equalities Team and regular updates on progress will be requested.

Step 6 Review and approval

On completion the EqlA should be emailed to equality@sds.co.uk for a final check and to ensure any identified actions are coordinated with other equality work within the organisation.

The EqlA will then be signed off by a SDS8 (or head of region for local projects) and a hard copy of the signed EqlA will be kept on file by the SDS Equalities Team.

Step 7 Publish the results

Once approved the EqlA needs to be published on the SDS website. You may wish to also share the EqlA with other partners as appropriate to your policy.

Step 8 Monitor and review the decision/ application of the policy or procedure and its impact on equality

How will you ensure and demonstrate that your actions are effective?

How will you periodically check that equality impacts have not changed?

EqlAs should be updated every three years that the policy is in place, or when there are any major changes to the policy

The SDS Equalities Team will be able to provide information on how SDS approaches EqlAs: equality@sds.co.uk

5.5 Tools for creating an inclusive environment: dignity at work

Section 3 of this toolkit (The framework for equality and diversity) provides information on the legal framework for harassment. Let us now examine harassment and bullying in the workplace in more detail, before examining how employers can tackle unacceptable behaviour, and the approach taken by SDS.

5.5.1 What is harassment and bullying?

The Equality Act 2010 defines harassment related to a protected characteristic occurs when a person engages in: “unwanted conduct which is related to one or more of the relevant protected characteristics and which has the purpose or the effect of violating the dignity of another person or creating for that person an intimidating, hostile, degrading, humiliating or offensive environment.”

The perceptions of the recipient of the harassing behaviour are particularly important, and it is useful to understand this in order to appropriately deal with any informal and formal complaints. What is perceived as harassment by one individual may be perceived by others as normal social exchange. However, when someone makes a complaint about harassment, employers must take the complaint and the ‘victim’s’ reaction to the incident seriously. It is not the perpetrator’s intention or perceptions of what someone’s reaction should be that matters.

Examples

- = There is inappropriate banter about sexuality that makes a gay member of staff feel uncomfortable. This could be harassment related to sexual orientation.
- = A member of staff in the company canteen makes racist comments about black people. These comments are not directed at a particular individual, but the comments create a hostile and intimidating environment. This could be harassment related to race.

Unlike harassment, bullying is not defined under the Equality Act. ACAS provide the following definition: **“Bullying may be characterised as offensive, intimidating, malicious or insulting behaviour, an abuse or misuse of power through means intended to undermine, humiliate, denigrate or injure the recipient”**.³

5.5.2 What is the difference between harassment and bullying?

While the experience of being bullied or harassed might be the same, the legal framework is different. Harassment is unlawful under the Equality Act and this means that the legal recourse for bullying and harassment is different.

- = In instances of harassment an employee can bring a claim of discrimination under the Equality Act.
- = In instances of bullying the employer may be failing to provide a safe working environment in which case the victim would have recourse to health and safety at work legislation. There

³ <http://www.acas.org.uk/index.aspx?articleid=797>

may even be a case for claiming constructive dismissal should the employee be forced to leave because of the bullying.

5.5.3 Dignity at work

One of the key methods for tackling the issues of bullying and harassment is the introduction of a bullying and harassment policy, often called a dignity at work policy. At SDS this is called the dignity at work policy and procedure.

SDS's dignity at work policy and procedure does the following. The policy:

- = states the organisation's commitment to creating a culture of dignity and respect at work
- = defines unacceptable behaviour in the workplace
- = provides examples of harassment, bullying, victimisation and discrimination
- = outlines SDS's commitments as an employer to creating a safe and non-threatening working environment
- = provides information about the support provided to employees who feel that they are being subjected to any form of unacceptable behaviour in the workplace
- = details the procedures that SDS will follow if an employee makes a complaint about unacceptable behaviour at work, including both the informal and formal process

SDS employees who believe they have been subject to harassment or bullying can also seek support from one of the following:

- = employee's manager
- = HR business partner
- = employee assistance programme
- = trade union representative

5.5.4 Further support and information

SDS dignity at work policy and procedure.

HR can provide guidance and support.

CIPD guidance on dignity at work: <http://www.cipd.co.uk/NR/rdonlyres/D9105C52-7FED-42EA-A557-D1785DF6D34F/0/bullyatwork0405.pdf>

5.6 Tools for creating an inclusive environment for disabled staff

5.6.1 The social model of disability

The following is valuable reading for anyone keen to better support disabled colleagues, employees or service users.

The social model of disability distinguishes between impairment and disability, suggesting that whether a person with an impairment is disabled depends on the physical, procedural and social barriers they encounter.

Employers and training providers provide employment and educational opportunities to staff and learners. The way that these are provided may include barriers which disable people with impairments from accessing and benefiting from them.

These disabling barriers may be physical (eg the design of the built environment), procedural (eg the way a course is delivered) and social (eg lack of awareness, negative attitudes towards disabled people – whether conscious or unconscious). People with different impairments, and people who disclose similar impairments, may experience different disabling barriers.

The social model therefore locates the cause of disabled people's disadvantage in societal barriers. This contrasts with the medical model of disability, which locates the cause of disadvantage in the impairment or difference. The medical model looks at what is 'wrong' with the person and focuses on their limitations rather than looking at what the person needs. It creates low expectations and leads to people losing independence, choice and control in their own lives.

5.6.2 Supporting disabled people

Support for disabled people includes removing barriers and making individual reasonable adjustments. Support should be enabling and respect the disabled person's desire for independence.

What are reasonable adjustments?

The Equality Act requires employers, service providers and education institutions to give particular consideration to the fact that bringing about equality for disabled people may mean changing the way that services are delivered, changing the equipment that is provided, or providing additional equipment, and/or removing physical barriers. This is referred to as the obligation to make reasonable adjustments.

It is important that organisations do not make assumptions about what an individual disabled person can or cannot do. Employers and training providers should consult with the individual about their requirements and about what the organisation can do to support them (eg reasonable adjustments).

Examples of reasonable adjustments

In the work place: employees experiencing mental health difficulties may require work management support (eg work action plans) and adjustments to work hours, role or location. Line managers may also require mental health awareness training to ensure that they consider how the work environment is supportive of staff experiencing mental health difficulties.

In a learning environment: some learners may require adjustments to the mode of course assessment. The purpose of an assessment is to demonstrate a learner's ability, knowledge and understanding of the course, and providing learners with a range of options can support a provider to meet its duty to make reasonable adjustments. Some examples of assessment methods include examinations, mind maps and providing podcasts instead of written assessment.

Assessment processes are integral to a number of SDS training offers (for example, MAs). Many providers delivering assessments take guidance from the awarding body. The SQA document which explains inclusive assessment arrangements can be accessed at http://www.sqa.org.uk/files_ccc/AA_AssessmentArrangementsExplained.pdf

You may wish to consult other awarding bodies to check if they provide their own guidance on inclusive assessment arrangements.

5.6.3 Encouraging people to disclose an impairment

Disclosing an impairment can be a very positive step. For example, under the Equality Act 2010, employers and education providers must consider making reasonable adjustments for people who have disclosed as disabled. Also, employers or education providers can use evidence from disclosure exercises to develop positive action initiatives.

However, many people have impairments or circumstances but choose not to disclose them. This could be for a wide range of reasons, including:

- = they feel their needs will not impact upon their ability to hold down a job or educational course
- = they feel they may be discriminated against by employers

It is therefore recommended that organisations promote to all employees the benefits of disclosing as disabled to support them in meeting their legal duties relating to reasonable adjustments. Communications should include details of how information will be treated in a confidential manner.

Guidance for training providers supporting individuals completing the Equality Monitoring Form for Modern Apprenticeships and Employability Fund is available at:

<https://www.skillsdevelopmentscotland.co.uk/for-training-providers/employability-fund/>

Details of confidentiality can be found on the EHRC webpage:

<http://www.equalityhumanrights.com/legal-and-policy/our-legal-work/inquiries-and-assessments/inquiry-into-disability-related-harassment/background-to-the-inquiry/call-for-evidence/data-handling-and-confidentiality>

5.7 Tools for creating an inclusive environment for trans staff

Section 3 of this toolkit (The framework for equality and diversity) provides information about the protection the Equality Act provides for trans people. Section 4 of this toolkit (Inclusive recruitment) provides guidance on language that is inclusive of trans people. As stated in the earlier section about language and gender, 'trans' is an inclusive term used to describe those who identify themselves as transgender.

It is valuable to give particular consideration to how you support trans people in the workplace. This section highlights some of the key areas to consider.

5.7.1 Support during transition

When an individual notifies you that they are transitioning recognise name changes in an unobtrusive fashion. If the individual is a member of staff, a face-to-face meeting in a private space should be arranged with them to discuss what support SDS can give during and after the transition process. This should include reaching an agreement about when their staff records will be updated to reflect their affirmed gender and name.

Agree with the trans person if and how they want to tell people about their upcoming transition, whether individually either face-to-face or by email, or by arranging a meeting with their colleagues or fellow students. If practical, invitations for a meeting should be sent to anyone they work or interact with frequently.

5.7.2 Confidentiality

It is vital that confidentiality is respected, and that no information about someone's trans status is revealed without their prior agreement.

In specified circumstances, the Gender Recognition Act prohibits disclosure of the fact that someone has applied for a gender recognition certificate (GRC), or disclosure of someone's gender before the acquisition of a GRC. Such disclosure constitutes a criminal offence liable to a fine.

It is therefore important that any staff or customer records are amended to ensure that their trans status is kept confidential. In some circumstances this may require that an individual's records be made accessible only to designated individuals.

5.7.3 Identification and proof of name change

It is never acceptable to ask someone for a GRC. Show flexibility when requesting proof of ID, and if you require legal proof of name change then request a statutory declaration of name change or birth certificate.

For some employment roles it is necessary for people to undergo a Disclosure Scotland check (eg jobs that involve working with children or vulnerable adults). Disclosure Scotland has a particular procedure that trans people can follow. This enables the trans person to submit any previous names in a separate letter, rather than on their Disclosure Scotland form.

The Scottish Transgender Alliance has further guidance on this:

<http://www.scottishtrans.org/trans-rights/practice/confidentiality/>

Disclosure Scotland also provides guidance:

<https://www.disclosurescotland.co.uk/publications/documents/ARTICLE-TRANSGENDER.pdf>

5.7.4 More information

If you wish to find out more about how best to support trans people then we recommend consulting the resources provided by the following organisations:

Scottish Transgender Alliance: <http://www.scottishtrans.org/>

The Gender Trust: <http://gendertrust.org.uk/>

Gender Identity Research and Education Society (GIRES): <http://www.gires.org.uk/>

5.8 Tools for creating an inclusive environment: celebrating cultural differences

It is important to recognise that we all carry cultural/racial stereotypes. We carry them in relation to our own culture so it is even more likely that we will carry them for cultures that are different from our own.

There are many factors which makes us different from each other, culture being only one of them. Class, religion, gender and our past experiences all shape us into different people. It is important not to generalise about people and to remember that in groups we may not be very familiar with, there are as many variations as there are in our own group (however we choose to define our 'own group').

Valuing diversity means recognising and accepting that people have different ways of doing things. Differences in cultural norms and values are easier to discuss if we recognise that we too are coming from a particular cultural perspective. Truly valuing diversity means recognising the positive aspects of other cultures.

For dates of major religious festivals see the Interfaith Calendar. People in all faiths and cultures have different levels of observance and will celebrate in different ways. It is important not to make assumptions about a person's religious observance. There is no need to assume that everyone will want to take time off to mark key religious festivals. In an inclusive working environment what is important is to try to accommodate people's requests for time off to mark religious festivals.

What next?

This section aimed to provide you with general guidance on how to create an inclusive workplace.

More information

Throughout this section we have highlighted where to find additional information about specific issues. In particular we have referenced the information provided by ACAS to employers. They provide information on a number of issues, from bullying and harassment through to good practice in equality monitoring. You can find more information on their website:

<http://www.acas.org.uk/index.aspx?articleid=1461>

Questions

If you have specific questions about how to support specific individuals that have not been answered in this section of the toolkit, then you may wish to take a look at the information included in section 6 of this toolkit (Guidance on supporting individuals).

If any questions remain unanswered after you have referred to the relevant sections of this toolkit, contact the SDS Equalities Team: equality@sds.co.uk



SDS Equality Toolkit Section 6: guidance on supporting individuals

Introduction

What is the purpose of this section of the toolkit?

This section of the SDS Equality Toolkit contains responses to the questions that are most frequently asked by SDS staff, partners and training providers in their work to support staff and SDS customers. It is designed to be a useful reference point for some of the key questions that might arise in your role.

Who is this section of the toolkit useful for?

This section of the toolkit will be useful for frontline staff who are working to support individuals who are seeking advice and support from SDS.

How can I use this section of the toolkit?

These FAQs should be used alongside the other sections of the SDS Equality Toolkit which provides guidance on the steps you can take to ensure you are doing your work in a way that creates an inclusive environment for all. If the general guidance provided in the rest of the toolkit does not give you sufficient information to support an individual, then these FAQs may be useful.

This section includes information on:

- = alcohol abuse
- = autistic spectrum disorder
- = carers
- = drug misuse
- = dyslexia and dyscalculia
- = hearing impairments
- = homelessness
- = learning disability
- = long-term illness
- = mental health
- = social, emotional and behavioural difficulties
- = speech or language difficulties
- = visual impairments
- = working with people who offend/have offended
- = young people leaving care

What do I need to know to support customers with experience of alcoholism?

Alcohol abuse is prevalent in today's society. Many people drink more than the government's recommended weekly alcohol allowance (14 units a week for both men and women).

People who regularly exceed this limit are at risk of developing physical complications, and some of these people will go on to develop alcoholism. This means that someone has to drink ever increasing amounts of alcohol to achieve the same effect, and that they develop withdrawal symptoms when they stop taking alcohol. They are usually aware of the damage they are causing themselves, but their psychological need for alcohol is so strong that they have great difficulty controlling the amount they drink, or stopping drinking altogether.

Alcoholism can affect anyone and people often start drinking too much because of work-related stress or depression. Most commonly affected, however, are middle-aged males.

The Scottish Government, supported by the Drug and Alcohol Action Teams (DAATs) across Scotland has identified support into employment, training and continuing education as a priority. Getting a job is a major milestone for most recovering alcoholics.

Recovering alcoholics are under no obligation to disclose their status. Alcohol addiction is itself not a disability and is excluded from the protection of the Equality Act. However, if the alcoholism has caused someone to become mentally or physically ill, then the individual may have certain rights under the Equality Act.

Be aware of the length of time they have been in recovery for. Starting a new job too soon can be detrimental to recovery.

If the individual is still receiving formal support for their addiction, it may have implications on the type of work they can do (ie they may need to meet support workers, etc., at specific times of the day).

People with a history of problematic alcohol abuse may have a poor sickness record in previous employment or gaps in their employment record. They may also have poor references from previous employers if their drinking was an issue.

Certain environments may be unsuitable places to work. Bar and hotel work is obvious, but less obvious are environments where regular after-work drinking is part of the culture.

A list of organisations that can provide support to someone who is concerned about their drinking can be found on the Alcohol Focus Scotland website <http://www.alcohol-focus-scotland.org.uk/>

What do I need to know to support customers with autistic spectrum disorder?

For guidance on how to support disabled people, please consult section 5 of this toolkit (Creating an inclusive workplace).

Autistic spectrum disorder (ASD) is a term used to describe people who have difficulty understanding verbal and non-verbal communication, interpreting social behaviour and adapting their behaviour to suit different situations.

Autism is a lifelong developmental disability that varies in severity from person to person. It is estimated to affect about one in 100 people, and is more common in men than women. The cause of autism is unclear.

People with autism may also have a learning disability or be more prone to mental illness. There is a range of intervention approaches that can help people with autism manage their condition.

Asperger's syndrome is sometimes known as high-functioning autism, and opinion is divided as to whether both conditions display the same indicative features. People with Asperger's generally are of average or above average intelligence, but they have similar characteristics to people elsewhere on the spectrum.

People with autism have difficulty in three main areas which are sometimes called the triad of impairments:

- = social communication
- = social interaction
- = social imagination

SDS and the National Autistic Society have developed a handbook giving practical guidance to any practitioners working in an employability setting. The handbook contains useful advice for working with people on the autistic spectrum and can be found on the SDS website:

<https://www.skillsdevelopmentscotland.co.uk/media/35514/sds%20nas%20employment%20practitioner%20handbook%202011.pdf>

In Edinburgh and Lothian, IntoWork provides information on supported employment services for people on the autistic spectrum: <http://www.intowork.org.uk/>

What can I do to support a customer who is a carer?

A carer is someone who looks after another person, usually a family member. Carers often do not consider themselves as carers, and many of them have other responsibilities, such as a job or family, over and above their caring duties. Carers may care for elderly, ill or disabled people or siblings.

Young carers

There are thought to be more than 100,000 young carers in Scotland. These are people under 18 who regularly carry out caring tasks, including practical or emotional support that would normally be carried out by an adult. Young carers are more likely than their peers to underachieve at school and are at risk of being socially isolated and bullied. They are also at greater risk of physical and mental ill health.

Context

In Scotland there is a specific government commitment to ensuring successful post-16 transitions into education, employment or training for all young people, with targeted support for those who need it most through a cohesive and collective effort from a range of partners.

Young carers are one such vulnerable group and should be offered targeted services appropriate to their specific circumstances. This resource is intended to provide practical assistance to advisers when shaping the most suitable course of action and emphasises the benefits of engaging with local specialist carers projects/services which will have dedicated services available.

Defining a young adult carer

Young carers are children and young people who look after someone in their family who has an illness, a disability or is affected by mental ill health or substance misuse.

Young carers often take on practical and/or emotional caring responsibilities that would normally be expected of an adult. The tasks undertaken can vary according to the nature of the illness or disability, the level and frequency of need for care and the structure of the family as a whole.

A young carer may do some or all of the following:

- = practical tasks, such as cooking, housework and shopping
- = physical care, such as lifting, helping a parent on stairs or with physiotherapy
- = personal care, such as dressing, washing, helping with toileting needs
- = managing the family budget, collecting benefits and prescriptions
- = administering medication
- = looking after or 'parenting' younger siblings
- = emotional support
- = interpreting, due to a hearing or speech impairment or because English is not the person's first language

Some young carers may undertake high levels of care, whereas for others it may be frequent low levels of care. Either can impact heavily on a child or young person.

Good practice when delivering services

Feedback from dedicated young carers services indicates that when a caring role is identified and a personalised approach taken then the outcome tends to be positive for young carers. Below are some tips for providing services to carers (in the words of young carers themselves).

- = Recognise that our responsibility as carers can affect our education and schoolwork.
- = Find out about us, what we need and how we are not like other clients.
- = Take time to find out about individual problems at home. Sometimes we're too embarrassed to tell you ourselves.
- = Don't automatically punish us if we're late. Sometimes we can't help being late because we're helping out at home.
- = Provide more support.

- = Be flexible – give us more time to complete tasks/follow up actions.
- = Let us phone parents if we need to find out if they are OK.
- = Make sure that advisers are offered training on young carers and disability issues.

Other suggestions/feedback from young carers projects also provide a useful prompt for advisers when considering the most appropriate interventions for young carers. Highlights include:

- = where joint awareness sessions have taken place (eg input to respective team meetings) this has been welcomed and staff have been able to gain better understanding of the details of each other's services/resources
- = in some instances SDS/carers staff have been involved in joint case conferences where post-school transitions have been the priority and client feedback has been positive
- = carers services are keen to support local SDS teams build awareness of issues affecting carers and how best to support; this is best organised at local level
- = carers staff are sometimes unsure about the roles of SDS staff and the details of support on offer. Through joint meetings/continuing professional development (CPD) this can be addressed. In addition the Young Carers Strategy (2010) <http://www.gov.scot/Resource/Doc/319441/0102104.pdf> contains a number of actions for SDS and there have been examples where local SDS teams/ carer's projects have used the actions as a template for planning joint work
- = flexibility in terms of career options discussed is recommended to take account of the demands of each young person's caring circumstances and what supports might be required post-placement

Parent carers of disabled children

Approximately seven per cent of children are disabled, and the vast majority of these children live at home and are cared for at home by a parent. A high percentage of carers for disabled children are single parents, and very few of these carers are likely to be in employment, especially women. These carers are likely to be younger than other carers, and may not be able to envisage an end to their caring responsibilities. They are also more likely than other carers to be financially responsible for other children.

Parents of disabled children may have other factors to consider when looking for employment, such as:

- = lack of specialised, affordable childcare
- = financial implications (loss of benefits, etc.)
- = lack of flexible employment (many disabled children are more prone to episodes of ill health, or have a regime of healthcare appointments)

It is also extremely difficult to access suitable childcare for disabled children during school holidays, so term-time working arrangements may be especially suitable.

Carers of disabled children are often quite isolated, and they may lack self-confidence. Getting a job can offer them some much needed independence and adult company.

Sources of expert support and advice

Local carers centres/young carers services exist throughout the country and provide specialist support. Typically the range of services can include the following:

- = 1:1 support
- = advocacy
- = peer group activities/respice
- = issue-based activities
- = general information and advice

More information is available from Carers Trust Scotland: <https://www.carers.org/scotland>

Contact details: **0300 123 2008** or email: scotland@carers.org

Kinship care

All across Scotland, thousands of people care for children because their natural parents are unable to do so. These are often grandparents, aunts and uncles but can also be family friends. People who look after children in these kinds of circumstances are often known as 'kinship carers'.

There is a national kinship care helpline to provide support and advice to people in these circumstances.

More information about the helpline can be found here: <http://www.children1st.org.uk/kinship-care>

And the helpline can be contacted on **08000 28 22 33**.

What can I do to support someone with experience of drug misuse?

Like alcoholism, drug abuse is an issue that can affect anyone. However, while most alcoholics are middle aged, many ex-drug users will have started taking drugs in secondary school. Most young people do not take illegal drugs. A number of young people will experiment with drugs for a short period of time, but for others, drug abuse will cause enduring health and social problems.

As drug abuse often starts in secondary school, many drug abusers will have a lack of qualifications and poor academic and social skills.

As possession of controlled drugs is against the law, many drug abusers will have a criminal record, and many may be insecurely housed due to having spent time in jail or relationship breakdown.

Individuals who have a history of problematic drug abuse may also suffer from poor mental or physical health.

Drug abuse, like alcohol addiction is not considered to be a disability under the Equality Act. However, if the individual suffers from mental or physical ill health, then they may have certain rights under the Equality Act.

It is likely that many ex-drug abusers will not be ready for full-time work, training or education. Creating a reverse career path – which means working out your long-term goal first, and then mapping out the steps you need to take to get there – can help people achieve small goals en route to their long-term goal.

Drug abusers may lead chaotic lives, and some may be new to the world of work, meaning that they lack basic workplace skills, like regular attendance and punctuality, working as part of a team and organisational skills.

Partnership working (drug misuse)

Perhaps more than any other socially disadvantaged group of people, partnership working is important when dealing with customers who are ex-drug abusers. There are 22 alcohol and drug action teams (ADATs) across Scotland, and their remit is to establish a local agency network to support drug abusers. Anyone who is presented with a customer who has been a drug abuser should make sure that they are aware of the other agencies' responsibilities and any referral arrangements that are in place.

One of the biggest hurdles ex-drug abusers face is employers' attitudes. Although ex-drug abusers are under no obligation to disclose their status, problems may arise when drug abuse is accompanied by a criminal record with unspent convictions.

Further support can be found at the Turning Point Scotland website:

<http://www.turningpointscotland.com/>

What do I need to know to support someone with dyslexia and dyscalculia?

For guidance on how to support disabled people, please consult section 5 of this toolkit (Creating an inclusive workplace).

A person with dyslexia usually has difficulty with reading, writing and spelling.

A person with dyscalculia has difficulty with numbers.

Many people, especially older people, may have gone through school without their specific learning difficulties, like dyslexia and dyscalculia, being diagnosed. As a result, some people may have developed coping strategies.

It may be in the individual's best interests to have a formal diagnosis. This can be obtained from a psychologist who specialises in adult dyslexia. Dyslexia Scotland can help you with this:

<http://www.dyslexiascotland.org.uk/>

As reading, writing and numeracy skills are required in most jobs, people with dyslexia or dyscalculia can easily be disadvantaged in the workplace. Many people with dyslexia or dyscalculia will know from experience what adjustments – technological or otherwise – can help them in an employment situation.

Screen-reading software is often useful. Some people with dyslexia find that a coloured background – on paper and on the computer – helps them to read better.

Unemployed people who think that they may be dyslexic and who believe that their difficulty in finding a job is due to their dyslexia can ask the disability employment adviser at Jobcentre Plus to arrange an assessment with an occupational therapist to confirm that they are dyslexic. After the assessment, the disability employment adviser is able to arrange training to help the customer cope with their dyslexia and find strategies to manage in the workplace.

What do I need to know to support someone with a hearing impairment?

For guidance on how to support disabled people, please consult Section 5 of this toolkit (creating an inclusive workplace).

More than one in seven people will have a hearing problem at some point in their lives. Some people will be totally Deaf, while many more will have residual hearing.

People who were born Deaf will generally have BSL as their first language, and English as their second language. Those who lost their hearing in later life will usually lip read. Although deafness would be considered a disability under the Equality Act, many Deaf people do not consider themselves disabled, but as part of a distinct cultural group. They prefer to be described as Deaf (with a capital D).

It is also useful to note that assistance dogs are used to support a range of individuals. For example, there are Hearing Dogs for the Deaf. Assistance Dogs UK provides information for employers:

<http://www.assistancedogs.org.uk/faqs/#info>

There are a number of organisations that provide information about deafness and hearing loss, and provide advice on ways of communicating:

= Action on Hearing Loss Scotland:

<http://www.actiononhearingloss.org.uk/about-us/scotland.aspx>

= Action on Hearing Loss has an online resource with tips for communicating with a deaf person:

<http://www.actiononhearingloss.org.uk/your-hearing/ways-of-communicating.aspx>

= National Deaf Children's Society: <http://www.ndcs.org.uk/>

What do I need to know to support someone affected by homelessness?

The definition of homelessness is 'being without a safe and permanent home'. Very few homeless people are rough sleepers, but many will be in temporary accommodation such as hostels, bed and breakfast hotels or moving from one friend or relative's house to another.

A hurdle for people experiencing homelessness is the lack of a permanent address. This can be off-putting to employers, and it also makes it difficult for the individual to produce enough ID to, for example, open a bank account.

Homelessness can present logistical problems such as hostels setting a curfew in the evening and/or not allowing access during the day. This can preclude people from taking jobs that involve shift work or evening work. Local authorities can also move residents from one form of temporary accommodation to another, increasing their journey to work.

Shelter Scotland provides information, advice and support in relation to homelessness.

For housing advice and support contact Shelter Scotland: <http://scotland.shelter.org.uk/>

What do I need to know to support someone with a learning disability?

For guidance on how to support disabled people, please consult section 5 of this toolkit (Creating an inclusive workplace).

A learning disability is a lifelong condition that starts before adulthood. It affects a person's intellectual development and sometimes their physical development too. 'Learning disability' is an umbrella term that covers a wide range of different syndromes and conditions. It is estimated that 20 people in every 1000 have a mild learning disability and three or four in every 1000 have a profound learning disability.

People with learning disabilities may have difficulty in learning how to do things, adapting to new situations and coping independently. Sometimes people have a learning disability that is so mild it is barely noticed. Others have a disability so profound that they will always need help and support.

Even until recently, people with learning disabilities were effectively segregated from the rest of society; children with learning disabilities went to special schools, and many adults lived in long-stay hospitals. Now, the policy is for as many children as possible to go to mainstream school (with support, if necessary) and for adults to have their own home in the community.

A support worker or personal assistant may accompany some individuals with learning disabilities. If your customer is a young person with learning disabilities, they may be accompanied by parents. You should communicate directly with your customer, and try to avoid a situation where a support worker or family member talks for your customer.

Some people with learning disabilities might find it useful to have an independent advocate at meetings.

There are a number of organisations that provide information about learning difficulties:

Enable Scotland: <http://www.enable.org.uk/>

Scottish Consortium for Learning Disability (SCLD): <http://www.sclld.org.uk/>

Momentum Scotland: <http://www.momentumuk.org.uk/>

What do I need to know to support someone with a long-term illness?

A long-term condition is one that lasts more than a year and one that may affect any aspect of the person's life. These can be life threatening or life limiting, affecting people physically, mentally and emotionally. Some people are born with long-term conditions; others will be affected at different ages and stages of life. Symptoms may come and go and may progress. Many people have more than one long-term condition.

Examples of long-term conditions include: asthma, diabetes, epilepsy, psoriasis, cancer, heart disease, arthritis, myalgic encephalopathy (ME), chronic pain and HIV.

The conditions themselves vary in severity, and will affect people in different ways.

People with long-term conditions are included in the definition of 'disability' within the Equality Act, although many of them do not consider themselves to be disabled.

Individuals with HIV, cancer and multiple sclerosis (MS) are covered by the Equality Act from the point of diagnosis, rather than from the point when the condition begins to have an impact on their ability to carry out normal day-to-day activities.

Long Term Conditions Alliance Scotland provides further information and advice:

<http://www.alliance-scotland.org.uk/who-we-are/>

What do I need to know to support someone with mental health problems?

One in four Scots will experience a mental health problem at some point. There is no single cause of mental ill health, and most problems can be treated successfully. Although mental health problems are very common, for many people in our society there is still a stigma attached to discussing mental health issues.

Most mental health problems can be treated by medication and/or talking therapies. Most people with mental health problems can continue to work during the course of their treatment. People with long-term mental health problems are covered under the Equality Act's definition of a disability, but for employers to make reasonable adjustments, they need to be aware that a person has mental health problems.

Common mental health problems include the following.

Depression – this manifests as a collection of symptoms that interfere with a person's ability to work, sleep and live a normal life. Some people have a one-off episode, and others will have recurring depression. People with depression often have low self-confidence and low self-esteem.

Bipolar disorder (previously known as manic depression) – this involves extremes in moods, ranging from depression to elation (mania). People with bipolar disorder often have long periods of time without exhibiting any symptoms, and often the condition flares up when they are stressed.

Anxiety – most people feel anxious from time to time. However, some people suffer such severe anxiety that it affects every aspect of their lives. Panic attacks, phobias and obsessive compulsive disorders are all due to severe anxiety.

Schizophrenia – this is perhaps the most misunderstood mental illness. It is extremely rare for people with schizophrenia to harm other people. They are far more likely to harm themselves. The symptoms of schizophrenia can be very distressing, and can include hearing voices, seeing things and extreme paranoia.

There are a number of organisations that provide information about mental health:

Steps for Stress: this online resource provides guidance on reducing stress

<http://www.stepsforstress.org/>

Scottish Association for Mental Health: <https://www.samh.org.uk/>

What do I need to know to support someone who is physically disabled?

For guidance on how to support disabled people, please consult Section 5 of this toolkit (creating an inclusive workplace).

Further information and advice is also provided by Momentum Scotland:

<http://www.momentumuk.org.uk/> and Capability Scotland, <http://www.capability-scotland.org.uk/>

What do I need to know to support someone who has social, emotional and behavioural difficulties?

The number of people with social, emotional and behavioural difficulties (SEBDs) is increasing. The problems associated with SEBDs peak during adolescence, so you are most likely to encounter customers with SEBDs when you are dealing with school leavers. People with SEBDs may have a lack of respect for authority, difficulty in coping with change and they may be unable to anticipate the consequences of their actions.

SEBDs are not defined as disabilities under the Equality Act 2010, but they may occur as a result of a disability that is covered.

There is no typical individual with SEBDs. Some may be very withdrawn and some may talk too much and at inappropriate times about inappropriate subjects. This means that they may not perform well in an interview situation or in a group setting.

Be consistent in your dealings with all customers.

You may have to explain to the individual that some types of behaviour are not acceptable in the workplace. As is the case for many of us looking for our first job, they may be genuinely unaware of how to behave with colleagues or in an office environment, for example.

What do I need to know to support someone with speech or language difficulties?

There are a wide variety of communication disorders or speech impairments. Impairments range from fluency difficulties, such as stuttering or stammering, to dysphasia, a problem with articulating thoughts in a spoken way due to brain damage. People who have no speech at all are described as mute.

People who have been Deaf from birth may also have speech difficulties, as speech is learned through hearing. Deaf people who have no speech at all are described as Deaf without speech.

People tend to communicate better when they are relaxed, so it is important to create an environment where there is no time pressure. Be patient and wait for the person to finish, and never finish their sentences for them or interrupt.

If you do not understand what the person is saying, say so and ask them to repeat it.

Make sure that you have grasped the full meaning by repeating what you have understood, and waiting for the person to respond.

Be flexible about the forms of channels of communication you use; some people may prefer to communicate by text or email.

Further information: Afasic Scotland <http://www.afasicscotland.org.uk/> supports parents and carers of young people with communication impairments.

What do I need to know to support someone with a visual impairment?

For guidance on how to support disabled people, please consult section 5 of this toolkit (Creating an inclusive workplace).

There are over 38,000 registered blind or partially sighted people in Scotland, the vast majority of whom are over 65 years of age, but studies suggest that this is only a third of the true number.

As most workplaces and education establishments rely on printed information, a visual impairment can have significant implications. Fortunately, technology has advanced tremendously in the past few years, making information more accessible to people who are blind and visually impaired than ever before.

Most blind or visually impaired people will already have a preferred method of accessing information. You should ask the individual how they would like to receive information.

If you are asked to provide something in large print, this usually means 16-point minimum, but many people will need it larger than this. It is always better to enlarge print from the original document. If this is not possible, you can enlarge a document on the photocopier, but it will lose some definition.

If your customer prefers audio information, it is possible to download free software, like Audacity, which will allow you (if you have a microphone or other recording device) to produce the information in a suitable format.

Braille is an acquired skill, and both braille and Moon are based on patterns of raised dots. Not all people who are blind or visually impaired use braille or Moon. Braille translation software sends PC output to an embosser, which then prints out braille.

People who are blind or visually impaired may need diagrams and pictorial information described to them.

Some blind and visually impaired people may employ readers or note-takers.

Software can convert a scanned page of printed text into an image that can be read by a screen reader. This is fine for most types of printed text, but unsuitable for handwritten material.

Some people who are blind or visually impaired may wish to familiarise themselves with a site. It may be useful to describe the layout of the room they are in.

Introduce each speaker in the room initially, giving their names and roles. It is useful if each person says who he or she is before speaking.

Let the blind or visually impaired person know when someone new comes into the room or when someone leaves the room or the conversation.

Non-verbal communication and body language should be verbalised.

Many visually impaired people need time to adapt when moving between spaces with different lighting conditions.

More information

Guide Dogs provides a range of guidance, including on guide dogs in the workplace:

http://www.guidedogs.org.uk/media/1488971/Guide_Dogs_in_the_Workplace_2009.pdf

RNIB Scotland: <http://www.rnib.org.uk/scotland>

RNIB Scotland can provide guidance on equipment assessments that may be required to support a person with a visual impairment.

What do I need to know about supporting people who offend/have offended?

Customers with offending backgrounds can face many barriers to entering and sustaining employment. These include:

- = gaps in employment history
- = lack of work experience
- = low confidence/motivation
- = stigma attached to having a criminal conviction

Disclosure of convictions

Understanding the disclosure of convictions and considering the implications for future choices of career area can be sensitive areas for both customers and staff. Therefore, where appropriate, it is recommended that customers and staff make use of specialist agencies such as Apex Scotland for further help and advice. Full details of their service to support disclosure can be found on the Apex Scotland website: <http://www.apexscotland.org.uk/>

‘Whole system approach’ to working with young people who offend

When working with young people who offend/have offended it is valuable to know about the ‘whole system approach’ that is being followed in Scotland to address persistent and serious offending and antisocial behaviour.

What is the whole system approach?

The whole system approach involves all key agencies at a local level working together to achieve positive outcomes for some of the most vulnerable young people, helping them to fulfil their potential and become valuable contributors to their communities. The approach works across all systems and agencies and aims to create one holistic approach to deal with young people who offend.

What are the main features of the whole system approach?

The approach involves putting in place streamlined and consistent planning, assessment and decision-making processes for young people who offend, ensuring they receive the right help at the right time. The ethos of the whole system approach suggests that many young people could and should be diverted from statutory measures, prosecution and custody through early intervention and robust community alternatives.

How does it work in practice?

- = Introduction of multi-agency early and effective intervention to ensure young people get a timely, appropriate and proportionate response to early/minor offending and are directed towards positive activities.
- = Introduction of a focused, intelligence-led approach to those who offend persistently or commit the most serious offences, which will enable partners to identify, target, support and challenge the most serious and persistent offenders in their area.
- = Introduction of multi-agency screening to identify opportunities for diversion from prosecution and diversion from custody ensuring that young people get an immediate and effective response that meets risk and need and that channels them towards options that will develop their capacity and skills.
- = Improvements in the use of risk assessment and risk management planning to support decision-making, ensuring the most expensive resources are targeted at the highest risk young people and that these are deployed effectively.
- = Greater use of restorative justice as a disposal (ie bringing those who offend into contact with victims of crime to enable all to play a role in repairing the harm the incident has created).
- = Greater use of community disposals (eg Community Payback Orders which involve supervised activity within the local area focused on community benefit).
- = Improving reintegration from secure care and custody including providing support to families.

How does it work in my area?

The whole system approach has been rolled out in all mainland Scotland local authorities. Local youth/criminal justice social work teams will be able to provide an update on implementation.

More information

More information about the whole system approach is provided by the Scottish government: <http://www.gov.scot/Topics/Justice/policies/young-offending/whole-system-approach>

In 2015 the Scottish government published its new youth justice strategy, 'Preventing offending: getting it right for children and young people', which focuses on advancing the whole system approach. The strategy can be accessed here: <http://www.gov.scot/Resource/0047/00479251.pdf>

All work related to youth justice is underpinned by 'Getting it right for every child' (GIRFEC), Scotland's overarching approach to supporting children and young people. GIRFEC aims to improve outcomes for all children by creating a single system of service planning and delivery across children's services.

If you consider that knowing more about GIRFEC would be valuable in your role, then the Scottish government has created an implementation guide: <http://www.gov.scot/Resource/Doc/318937/0101828.pdf>

What do I need to know to support care-experienced young people?

Research indicates that care-experienced young people are particularly vulnerable when making the transition from school to post-school provision. Many leave school with no/fewer qualifications than peers and find it difficult to move successfully into further or higher education, training or employment.

Worth noting: the term 'care-experienced young people' is increasingly used rather than 'care leaver'.

There is a range of legislation and government strategies that impact on how organisations such as SDS need to support young people leaving care.

= The Children (Scotland) Act 1995 <http://www.gov.scot/Publications/2004/10/20066/44708> gives local authorities a statutory duty to provide a service that prepares young people who have been looked after for the transition to independent living and to support them through that process and beyond.

Priority (in terms of legislation and vulnerability) is given to:

- young people who are or have been looked after and accommodated by a local authority under the age of 21 years
- young people who are or have been looked after by the local authority under the age of 19 years

- = The Regulation of Care (Scotland) Act 2001, <http://www.legislation.gov.uk/asp/2001/8/contents> Section 73 amends the Children (Scotland) Act and introduces regulatory provision of throughcare and aftercare. Local authorities are required to carry out a needs assessment of all care-experienced young people, and must meet the young person's identified needs under specific regulations and guidance. In addition, local authorities have new financial responsibilities for care-experienced young people under Section 6 of the Children (Leaving Care) Act 2000.
- = The Children and Young People (Scotland) Act <http://www.legislation.gov.uk/asp/2014/8/contents/enacted> 2014 placed a corporate parenting duty on certain public bodies. This means that SDS, health boards and all local authorities are defined as 'corporate parents' of looked-after children and care-experienced young people. This requires all teams/departments within SDS to be "alert to matters which, or which might, adversely affect the well-being" of looked-after children and care-experienced young people, to promote their interests, to assess their needs for the services which SDS provides and to provide opportunities to participate in activities. 'Corporate parent' public bodies are required to produce a plan for how they will perform these functions, report on progress and have regard to ministerial guidance, to provide information to Scottish ministers and to collaborate with other corporate parents.
- = Developing the Young Workforce <http://www.gov.scot/Publications/2014/12/7750>: Scotland's Youth Employment Strategy also commits to improving positive destinations and includes a key performance indicator (KPI) to increase positive destinations for looked-after children after leaving school by four percentage points each year. This seven-year strategy, running from 2014 to 2021 has a headline aim of reducing youth unemployment by 40 per cent by 2021.

Identification and assessment

Looked-after children and young people in school are identified by SDS through the risk matrix and the service they will receive is determined by the validation process involving the school and key partners. The school career coach will ensure the career management skills needs of each young person are met and that their career development plan is integrated within any transition plan such as the Pathway Plan.

Pathway Planning is the process through which the future needs of young people leaving care are assessed and planned for. Legislation obliges local authorities to provide a Pathway Coordinator (usually located within a local authority social work department) and a Pathway Plan for all eligible young people. SDS has a responsibility to assist in the assessment of the learning and work needs of care-experienced young people and make an appropriate contribution to the learning and work section of their Pathway Plan. The Pathway Plan will map out the support needs as young people approach more independent living. The plan will be reviewed once every six months to take account of the young person's changing needs and circumstances. The Pathway Coordinator will provide the key link between a young person and their local authority, providing support and helping coordinate services offered through the local authority or other organisations. They will continue to maintain contact until the young person is 21 years old.

Financial information

As a result of Section 6 of the Children (Leaving Care) Act 2000 certain young people aged 16 and 17 years old no longer claim directly from social security benefits. Money has been transferred via the DWP to local authorities to help support individuals more effectively, simplifying the financial regime by making authorities responsible for meeting the young people's needs. Young people who are now supported financially by their local authority must have been looked after and accommodated for 13 weeks since the age of 14 and must be eligible for aftercare support under Section 29 of the Children (Scotland) Act 1995. However care-experienced young people who are also lone parents or are disabled continue to be eligible for appropriate DWP benefits.

Young people who are accommodated outwith their own local authority and return to their home area on leaving care as well as young people who move away from their home area after leaving care are still the financial responsibility of their home local authority.

It is the responsibility of local authorities to identify to SDS those young people who will be supported financially by them in order to ensure that our staff are aware that they are not eligible to claim any DWP benefits. Young people leaving care who attend a SDS centre for support and advice do not therefore have to meet the same requirements as other young people who require to claim DWP benefits (please note that in some circumstances care-experienced young people can receive 'top up' money).

Strategies for working with young people leaving care

While you do not require to have an in-depth knowledge of all the legislation affecting care-experienced young people, it is important that you have made yourself familiar with the overview of The Children and Young People (Scotland) Act 2015:

<http://www.gov.scot/Topics/People/Young-People/legislation>

As stated all looked-after children and young people are identified to SDS through the risk matrix process and the support given is agreed through the validation process. In order to make an accurate diagnosis of a young person's needs this validation process should involve their Pathway Coordinator and any other professionals that are supporting the young person. You may be invited to attend a child care (or similarly termed) review for a young person for whom you are the named contact and SDS have made a commitment to attend appropriate review meetings where a young person's post-school options are being discussed.

In order to contribute to the development of the learning and work section of the Pathways Plan, you may be asked to provide the Pathway Coordinator with a copy of the career development plan. Any information that you pass on to the Pathway Coordinator or any other external organisation must be done so with the young person's permission and following the agreed information-sharing protocols.

For many care-experienced young people you will often have to take a more proactive approach to engagement. It is essential that strong links and good working relationships have been developed locally with social work services, agencies providing aftercare services on behalf of the local authorities (eg Barnardos) and individual Pathway Coordinators to ensure that care-experienced

young people maintain contact with SDS. Through effective inter-agency working, SDS will be able to provide career planning and employability support to increase their opportunities both to enter and sustain education, employment and training opportunities.

What do I need to know to support refugees and asylum seekers?

Supporting refugees and asylum seekers

It is useful to highlight the distinction between refugees and asylum seekers. Although the terms are often used together there are important differences between asylum seekers and refugees in terms of rights to work, education, benefits and funding.

Refugee status: if someone has applied for asylum and has been successful in their application then they have leave to remain in the UK; this may be refugee status, humanitarian protection or discretionary leave to remain. Such individuals are **refugees**. Refugees can work, undertake modern apprenticeships and volunteer, and they are entitled to benefits and SAAS funding. In short, refugees have the same entitlements as other UK residents.

It is important to note that the term 'refugee' has a specific definition under international law, and it is a human right to be able to claim asylum in another country. When a person seeks asylum in the UK, then their case is assessed by the UK Border Agency against the criteria set out in the 1951 UN Convention Relating to the Status of Refugees.

Asylum seekers: if someone has applied for asylum in the UK, but a decision has not yet been reached by the government, then they are an **asylum seeker**. Asylum seekers do not have the right to work in the UK, unless the Home Office has granted permission, which happens only in exceptional circumstances. They are also not able to register as unemployed.

Options for asylum seekers

Although asylum seekers are not able to undertake paid work, SDS supports them to gain skills that will be useful to them in the future regardless of the outcome of their asylum application. Here are more details of the training and education options for asylum seekers.

Training options

- = Asylum seekers are not allowed to receive payment for work, and this means that they are excluded from programmes such as Employability Fund provision.
- = Some organisations offer unpaid training programmes, and asylum seekers are eligible for such schemes. For example, the Prince's Trust runs the Get Into programme:
<https://www.princes-trust.org.uk/help-for-young-people/get-job/get-experience>
- = Asylum seekers are allowed to volunteer and can claim out-of-pocket expenses for doing so, as long as they are carrying out the work on behalf of a charity or voluntary organisation. Any voluntary activity undertaken should not amount to job substitution. Volunteer Scotland provides information about volunteering opportunities: <http://www.volunteerscotland.net/>

- = Work-shadowing is also an option for asylum seekers as it is unpaid. Similarly to volunteering, travel and lunch expenses can be paid. The Bridges Programme offer a range of work shadowing opportunities: <http://www.bridgesprogrammes.org.uk/>

Education options

Further education

Asylum seekers are only eligible for tuition fee support and help with travel and study costs for the following college courses:

- = a full-time or part-time English for Speakers of Other Languages (ESOL) course

or

- = part-time advanced or non-advanced courses (up to 16 hours a week)

Higher education

Asylum seekers are not entitled to any tuition fee or living-costs support. Their college or university will charge them international fees. This means it will be extremely difficult for asylum seekers to attend university. Nevertheless, they should be encouraged to apply since they could be granted refugee status during the university application process.

In exceptional circumstances funding may be made available to asylum seekers from educational trusts. It is important to note that funds are limited, oversubscribed and that they are unlikely to cover the whole course fee:

- = Carnegie Trust for the Universities of Scotland: <http://www.carnegie-trust.org/>
- = Glasgow Educational & Marshall Trust: <http://www.gemt.org.uk/>
- = Robertson Trust: <http://www.therobertsontrust.org.uk/>

Unaccompanied minors or separated children

Unaccompanied minors are young people under 17.5 years, who have arrived in the UK without an adult. They may be responsible for younger siblings. They are usually looked after by the social work department, and may move out of a residential care into bed and breakfast or hostel accommodation when they reach 16.

Unaccompanied asylum seekers have discretionary leave to remain until they reach the age of 17.5 years. This means that they are allowed to work and claim benefits until they become 17.5 years. When they reach that age, they must reapply for asylum as an adult.

Unaccompanied minors are allowed to work, and to take part in any age-appropriate training programmes, including those that pay an allowance to participants.

Further information

More details on employment rights for asylum seekers and refugees is available from the Home Office: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/304793/full-guide-illegal-working.pdf

What next?

This section of the toolkit aimed to answer some of the key questions that SDS staff and training providers raise with the SDS Equalities Team.

More information

For some of the conditions and experiences discussed in this section of the toolkit it may be useful to seek additional advice and support from specialist services, organisations and charities. The relevant contact details have been highlighted throughout this section of the toolkit.

Questions

If any questions remain unanswered after you have referred to relevant sections of this toolkit, contact the SDS Equalities Team: equality@sds.co.uk

You can also contact the SDS Equalities Team if there are any additional areas you would like these FAQs to cover.



SDS Equality Toolkit Section 7: resources

Introduction

What is the purpose of this section of the toolkit?

This section of the toolkit contains a number of resources you can use to strengthen and embed the knowledge you, your colleagues and employees have gained through reading and using other parts of this SDS Equality Toolkit.

Who is this section of the toolkit useful for?

This section of the toolkit could be used at an awareness-raising session for staff on their responsibilities under the Equality Act. It could be a way of introducing staff to the content of this toolkit. Individuals may also want to use the quiz as a way to gauge what they have learned through using the toolkit.

How can I use this section of the toolkit?

The case studies and videos are a useful reference point to understand how the information included in this toolkit is useful in real-world scenarios. Toolkit users may simply want to read them, or discuss them in team meetings.

The quiz and scenarios are useful tools to use at a staff meeting or workshop about equality and diversity.

7.1 Case studies

Case study 1: Enable's Employability Fund stage 3 provision: personal development towards employment

What challenges were identified?

For many learners a one-size-fits-all approach does not work. In order to improve their work-readiness, some learners need a personalised approach.

What did the training provider do as a result?

Enable's stage 3 Employability Fund provision is person-centred. This means that from the outset the learner is encouraged to define for themselves their barriers to employment and to investigate and suggest employers in their local area where they could gain work experience.

Learner-led: During the programme learners are given the opportunity to participate in taster sessions with a range of employers. This allows individuals to make informed choices as to the area of work they may wish to do in the future. Learners are supported on a 1:1 basis and within small group settings and are mentored throughout. Job coaching is also made available.

Collaborative approach: Practically speaking this means that Enable staff will set up meetings at SDS premises, so that the learner, their Enable key contact and the SDS careers adviser can discuss their options, plans and progress together. The Enable team are willing to do this as often as is necessary to ensure that the learner is supported into work.

Taster sessions: Enable proactively investigates appropriate employers for specific individuals to visit for work taster sessions. Enable staff will also accompany individuals to their taster sessions until the learner is comfortable to attend on their own.

What was the outcome?

The personalised approach taken by Enable has helped individuals to complete their stage 3 learning and gain work experience. One particular individual who was supported by Enable to overcome her severe challenges with shyness is now thriving in a modern apprenticeship.

Case study 2: Concept Northern – providing Access to Work support for modern apprentices with dyslexia

What challenges were identified?

Concept Northern provides specialist training and support to persons with additional support needs (ASN). As part of the Equality Challenge Fund they provided an employability route for persons with dyslexia. While candidates were participating in training, Concept Northern was confident about the level of support they were providing – the question is whether sufficient support is in place once the candidate commences employment.

One candidate progressed to a Plumbing MA and employment with a local company. His dyslexia did not cause many issues to his ability to carry out his job role, however he struggled with the training requirements of his MA.

What did the training provider do as a result?

During their employability programme Concept Northern showed the candidate how to use assistive software to study or support work-related tasks. They then contacted Access to Work to find out if they could provide support as the training element of the candidate's role was critical to job retention.

The employee is now in the pipeline to receive Access to Work support, which will include provision of literacy support and organisational software and training.

What was the outcome?

The Access to Work process can take a few months to implement but in this instance Concept Northern were able to provide the employee with loan equipment to ensure he did not fall behind with the training requirements of his MA.

In this case we had already trained our candidate how to use the technology he is about to receive but Access to Work will provide further training.

He is currently using the loan equipment to support his MA as it has text to speech, spelling and grammar support and organisational tools similar to the provision university students receive.

What can other training providers and employers learn from this case study?

It is valuable to raise awareness of the fact that Access to Work will help fund solutions to support a candidate's modern apprenticeship/training.

Since it can take some time before Access to Work funds are disbursed, training providers and employers can provide valuable support by offering loans of equipment.

Case study 3: Concept Northern – employability route for young persons with dyslexia

What challenges were identified?

Young people with dyslexia face many barriers entering employment. Literacy or numeracy issues, confidence in their own abilities and previous disappointment all play a role in a young person's progression.

What did the training provider do as a result?

Concept Northern have developed a Scottish Credit and Qualifications framework (SCQF) award specific to persons with dyslexia which we delivered for the Equality Challenge Fund. The award aims to develop core skills for the workplace and also provides information about how using assistive technology can support people with dyslexia in employment.

Concept Northern also work to ensure that Access to Work adjustments are implemented to sustain employment.

What was the outcome?

Through completing the SCQF award candidates become proficient in the use of literacy support and organisational software. Alongside the adjustments funded by Access to Work this ensured that a number of candidates that Concept Northern worked with moved into full-time MA positions and Access to Work support is being implemented.

Specific examples of how Concept Northern's approach has provided candidates with the confidence, ability and technical skills to progress:

- = one candidate now uses literacy support software to ensure outgoing emails are error free and is completing a Business Administration MA.
 - = another candidate is using the same software to read learning materials relating to his Plumbing MA out loud.
-

Case study 4: Construction industry employer

What challenges were identified?

There is a lack of access to, and interest in, our industry from women. As a construction business we are currently only accessing 50% of the available labour pool. We would love to be able to select for roles from a more gender balanced candidate pool.

We are also keen to attract more disabled applicants. Again this is because we want to be able to select candidates from a wide a pool as possible. We also have positive experience of employing disabled individuals.

As a large employer we also see it as a moral duty to tackle the barriers that some people face within the job market.

What did the employer do as a result?

The employer established a partnership with Remploy, the National Autistic Society with the aim of pro-actively providing support to disabled candidates to find a role with the construction sector, with a particular focus on young people aged 25 and under.

The employer had a positive prior experience of hiring an autistic individual as a site manager – this had led to increased knowledge and understanding of how to support people with autism to thrive in the workplace.

What was the outcome?

The employer had a positive prior experience of hiring an autistic individual as a site manager – this had led to increased knowledge and understanding of how to support people with autism to thrive in the workplace.

7.2 Equality Act quiz and scenarios

7.2.1 Trainer notes

These exercises – a quiz and series of scenarios for discussion – could be used at an awareness-raising session for staff on their responsibilities under the Equality Act, and to introduce staff to the content of this toolkit. Individual questions could also be included in other training sessions that staff undertake, or within specific meetings where responsibilities may form part of the agenda.

For a dedicated session, select three to five questions or scenarios for delegates to discuss in pairs of groups. Allow delegates five minutes per question or scenario.

Try to have different pairs/groups discuss a different set of questions or scenarios. Allow five minutes feedback for each question.

Some suggested areas to highlight have been included for each question.

Equipment and materials

Copies of the question and answer sheets and the toolkit will be required for participants.

Further, the following document may also be of assistance as it provides extensive detail of statutory requirements relating to employment and the Equality Act, and can therefore provide further legitimacy to discussions:

Equality Act 2010 Code of Practice on Employment:

www.equalityhumanrights.com/uploaded_files/EqualityAct/employercode.pdf

Accessibility

You will need to consider accessibility when organising and delivering the session, in particular, accessibility for disabled staff.

See this guide from JISC TechDis for some hints and tips in this area:

http://www.jisctechdis.ac.uk/techdis/resources/detail/aboutus/Accessible_Events

Confidentiality

To ensure freedom of discussion it is important to make staff attending the training aware that discussion in the room will be kept confidential. Chatham House Rules should apply:

www.chathamhouse.org/about-us/chathamhouse-rule

Staff attending the session should be advised not to name individuals when using examples and to avoid using examples in which sensitive and personal information could be easily be connected with an individual.

Timing

It is recommended that any training is held between 10:00 and 16:00 hours to ensure that people with childcare and other caring responsibilities can attend the full session. It is also recommended that consideration is given to religious days and festivals that are commonly observed by staff within your institution to ensure there isn't a clash. For dates of major religious festivals see the Interfaith Calendar

7.2.2 Equality Act quiz – question sheet

1. Sarah's partner is about to undergo gender reassignment from male to female. The office Christmas party is looming and usually all staff are invited to attend and to bring their partners. Sarah's manager has told her she is welcome to attend but not to bring her partner, as it would make other staff uncomfortable.
 - = Is Sarah being discriminated against? If so, what type of discrimination?
 - = What actions could the organisation take to prevent this situation arising?
 - = What else can organisations do to promote an environment inclusive of trans people?

2. Malcolm is a gay man who is open about his sexual orientation. His team manager is a fundamentalist Christian who thinks that homosexuality is an aberration and sin. He has told Malcolm that he often prays for him to be cured. Malcolm is furious, and feels that he is being discriminated against.
 - = Is Malcolm being discriminated against? If so, what type of discrimination?
 - = What actions could the organisation take to prevent this situation arising?
 - = What else can organisations do to deal with tensions between staff?
3. A childcare course requires that learners demonstrate practical childcare tasks, for example, listening, organising activities, observing and assessing children and dealing with health and hygiene needs. A disabled learner is refused entry to the course because it is assumed they will not be able to complete some of these tasks.
 - = Is this discriminatory?
 - = What is the relevance of reasonable adjustments?
 - = What are some of the ways that colleges can support disabled learners to access and succeed on their courses?
4. Student admissions interviews are scheduled to take place on a Friday. A number of potential Muslim and Jewish learners feel that they will be unable to attend their designated time slot for religious reasons.
 - = Is the practice of scheduling interviews on a Friday discriminatory?
 - = What actions could an organisation take in this situation?
 - = How could an organisation prevent this situation arising?
5. A training provider feels that women are underrepresented on a particular course, and seeks to use positive action to address the issue.
 - = Is it lawful to use positive action in this situation?
 - = If so, what sort of actions could the training provider take?
6. Would it be lawful for a college which runs a beauty therapy course to refuse to allow a suitably qualified man to enrol?

7.2.3 Equality Act quiz – answer sheet

1. Sarah's partner is about to undergo gender reassignment from male to female. The office Christmas party is looming and usually all staff are invited to attend and to bring their partners. Sarah's manager has told her she is welcome to attend but not to bring her partner, as it would make other staff uncomfortable.

= Is Sarah experiencing discrimination? If so, what type of discrimination?

= What actions could the organisation take to prevent this situation arising?

The direct discrimination provisions in the Equality Act provide protection for people who are discriminated against because of an association with someone with a protected characteristic.

Sarah is therefore being discriminated against as she is being treated differently, in terms of conditions of accessing a benefit, because her partner has undergone gender reassignment.

The organisation should ensure that all staff are aware that the manager's actions are unlawful, perhaps through training around requirements of the Equality Act. The organisation may also want to ensure that equality considerations, including gender reassignment, are included in any policies, and these are communicated to staff.

The organisation may also want to consider including messaging within the publicity for the event highlighting that all partners are welcome.

= What else can organisations do to promote an environment inclusive of trans people?

For information on this refer to Section 5 of this toolkit (creating an inclusive workplace)

2. Malcolm is a gay man who is open about his sexual orientation. His team manager is a fundamentalist Christian who thinks that homosexuality is an aberration and sin. He has told Malcolm that he often prays for him to be cured. Malcolm is furious, and feels that he is being discriminated against.

= Is Malcolm being discriminated? If so, what type of discrimination?

= What actions could the organisation take to prevent this situation arising?

Harassment is behaviour which "has the purpose or the effect of violating the dignity of another person or creating for that person an intimidating, hostile, degrading, humiliating or offensive environment".

It is likely that Malcolm could claim that his colleague's behaviour fits that definition. Although the colleague has the right to pray for whomever he wishes, Malcolm also has a right to work in a dignified environment where his sexual orientation is not talked of as something that needs to be 'cured'. Although the Equality Act promotes a work environment where people are able to observe their religion, the degree to which this is lawful is qualified by other provisions in the Equality Act, such as harassment.

All staff should be made aware of their responsibilities under the harassment provisions of the Equality Act, potentially through training (which could be a part of all line managers induction) and through publicly communicated policies.

= What else can organisations do to deal with tensions between staff?

For information on promoting dignity at work, see section 5 of this toolkit (creating an inclusive workplace).

3. A childcare course requires that learners demonstrate practical childcare tasks, for example, listening, organising activities, observing and assessing children and dealing with health and hygiene needs. A disabled learner is refused entry to the course because it is assumed they will not be able to complete some of these tasks.

= Is this discriminatory?

= What is the relevance of reasonable adjustments?

This is likely to be discriminatory if the decision is based on general assumptions about the aptitude of disabled people. There are many disabled people with a variety of impairment types who study childcare courses and work within this profession.

All decisions should be made on an individual basis, with careful consideration that disabled learners are not required to demonstrate more than non-disabled candidates on application.

Staff should be aware of the full extent of what the course requires. It should be considered what it means to listen, observe and assess, and how these requirements can be demonstrated through the use of an assistant for example. To do so would be making reasonable adjustments to assessment methods. It would be unlawful for a college not to make an adjustment if it was reasonable to do so.

= What are some of the ways that colleges can support disabled learners access and succeed on their courses?

For information on supporting disabled learners and staff, see section 5 of this toolkit (creating an inclusive workplace).

4. Student admissions interviews are scheduled to take place on a Friday. A number of potential Muslim and Jewish learners feel that they will be unable to attend their designated time slot for religious reasons.

= Is the practice of scheduling interviews on a Friday discriminatory?

= What actions could an organisation take in this situation?

= How could an organisation prevent this situation arising?

Indirect discrimination occurs when a provision, criterion or practice appears to be neutral, but its impact particularly disadvantages people who share a protected characteristic.

The practice of holding interviews on a Friday may therefore be an example of indirect discrimination as it disadvantages some learners on the ground of religion and belief. It will not be discriminatory if the college can prove that it is a proportionate means of achieving a legitimate aim. It is unlikely that holding all interviews on a Friday because of operational reasons would be considered a proportionate means of achieving a legitimate aim.

A college could therefore consider in advance offering flexibility with dates for interviews. This should consider requirements relating to other protected characteristics, for example disability and gender.

Where a time slot has already been designated, alternatives should be sought so that those learners unable to attend can do so.

5. A training provider feels that women are underrepresented on a course, and seeks to use positive action to address the issue.

= Is it lawful to use positive action in this situation?

= If so, what sort of actions could the training provider take?

The Equality Act includes provisions to adopt voluntary positive action measures to reduce underrepresentation in relation to particular activities (eg education). This will involve treating some people more favourably than others.

The organisation will need to do more than 'feel' that women are underrepresented; they need to have evidence of underrepresentation.

Examples of actions which providers may take include:

= targeting training at specific disadvantaged groups

= mentoring for specific groups when a need is identified

= providing crèche facilities

= open days which are held exclusively for the targeted group

= bursaries to obtain qualifications in a profession

= access courses

6. Would it be lawful for a college which runs a beauty therapy course to refuse to allow a suitably qualified man to enrol?

Appointing someone to a course solely on the basis of a protected characteristic, for example, because they are a woman, would be positive discrimination, which is unlawful in the UK.

There are some situations where organisations can provide single sex services but this is unlikely to be one those situations. Running a service for only one sex is allowable if only people of that sex require it and joint provision is not sufficient or as effective. In this situation excluding men from the course is likely to constitute direct discrimination.

The college should be thinking about how to support a male student on the course, rather than how to exclude him.

7.2.4 Equality Act scenarios – question sheet

Scenario 1

You work for a marketing organisation. One of the members of your team, Don, is constantly making sexist, racist and homophobic jokes and remarks. Don thinks of himself as an upholder of traditional values and he feels that “political correctness has gone too far and you can’t even have a bit of fun these days”. Most of the team are used to him and feel that he means no harm. He performs well at his performance reviews and his relationship with his external clients is good.

Elsa has recently joined the team as an apprentice. She finds Don offensive and obnoxious. One day you find her very upset because she has tried to challenge Don and he pointed out that there have never been any complaints before and that there was a good feeling of camaraderie in the team. Don suggested that marketing may not be the right career for her if she can’t see the lighter side of life.

- = What are the issues raised in this scenario? Is there anything discriminatory about Don’s behaviour?
- = How would you respond? How do you think other people in the organisation should respond?
- = What can organisations do to promote a working environment where people do not feel intimidated?

Scenario 2

In your department you have a colleague, Christine, who has a visible impairment. You notice that in both formal and informal discussions her contributions are often ignored, but later restated by other team members and then discussed. When her contributions are recognised, she is often patronised.

Christine has not said anything to you to suggest she is unhappy and she has not challenged any of the behaviour or comments.

- = What are the issues raised in this scenario? What effects may it have on promotion opportunities?
- = How would you respond? How do you think other people in the organisation should respond?
- = What can organisations do to promote a working environment where people’s opinions are valued?

Scenario 3

Two job seekers, Fatima Ali and Rukshana Hussein, have enrolled on a training programme. One of the local industrial employers who has a good relationship with the training provider has agreed to take two trainees on placement. When he hears that the names of the trainees are Fatima and Rukshana, he says, "Are they Muslim girls? Because I can't have people working on the shop floor in all those flowing robes and all that head gear. It's a danger to themselves and other people".

He goes on to say that he is not prejudiced against Muslims, but unless they are prepared to wear overalls he cannot employ them.

- = What are the issues raised by the scenario?
- = What course of action could be taken by the training provider?

Scenario 4

A senior management team is made up entirely of men. The team (supported by their board) is keen to see more women in senior positions. They set up a programme of management training and development for middle managers to improve their skills, knowledge and competence as managers. Using the positive action provision of the Equality Act, they decide to limit the participation to female middle managers. Fergus, who is also a middle manager, would like to be on the programme. He complains to HR when he is told that he is not allowed on the course.

- = Fergus thinks that is discrimination and it shouldn't be allowed. What do you think?

Scenario 5

Sam was born male but decided in her early 20s to spend the rest of her life as a woman. She started wearing women's clothing and lives her life as a woman. She has not undergone any medical intervention in relation to gender reassignment and she doesn't intend to. She has just completed a modern apprenticeship and has done very well.

SDS have asked her employer to suggest people as potential ambassadors for MA and the employer has said that although Sam has been outstanding, they think that because part of the role of the ambassadors is to boost apprenticeship opportunities, Sam might not be positively received by employers who are thinking of taking on apprentices. The employer also thinks that she won't be a role model that most apprentices will be able to relate to.

- = How do you think SDS should respond?

7.2.5 Equality Act scenarios – answer sheet

Scenario 1

You work for a marketing organisation. One of the members of your team, Don, is constantly making sexist, racist and homophobic jokes and remarks. Don thinks of himself as an upholder of traditional values and he feels that “political correctness has gone too far and you can’t even have a bit of fun these days”. Most of the team are used to him and feel that he means no harm. He performs well at his performance reviews and his relationship with his external clients is good.

Elsa has recently joined the team as an apprentice. She finds Don offensive and obnoxious. One day you find her very upset because she has tried to challenge Don and he pointed out that there have never been any complaints before and that there was a good feeling of camaraderie in the team. Don suggested that marketing may not be the right career for her if she can’t see the lighter side of life.

- = What are the issues raised in this scenario? Is there anything discriminatory about Don’s behaviour?
- = How would you respond? How do you think other people in the organisation should respond?
- = What can organisations do to promote a working environment where people do not feel intimidated?

Some key points to consider

It is likely that Don’s behaviour is creating a hostile environment, and therefore could be considered harassment. The implications of this are that potential apprentices and employers may be put off working in this profession, or may not perform as well as they could if they continue with the position.

It is important that the organisation challenges Don’s behaviour, otherwise the organisation is likely to be deemed in breach of the Equality Act. At an organisational level, measures should be taken to ensure this behaviour does not take place (through visible policies, staff training, etc.), and is appropriately disciplined.

On an individual level, challenging colleagues can involve taking a risk: the risk of aggravating the individual colleague and of setting yourself apart from other colleagues. Until you take that risk you will not know if there is support from others. It may be (and it is often the case) that the colleague that appears difficult and offensive is also experienced as difficult and offensive by many others but the team culture is one which has accommodated them. The team has a responsibility to contribute to an environment which is not racist or sexist or otherwise oppressive.

If the colleague has more status than you within the organisation it can make it more difficult to tackle them on an individual level. You may need to identify where you will get support from, for example, other colleagues, the equal opportunities policy, the HR manager, your line manager (assuming that the line manager is not the offensive colleague), or their line manager (if it is your manager). You will also need to check out the policies of the organisation.

If you take no action at all then it is likely that the situation will continue. The most likely outcome is that the new colleague will leave and the offensive colleague will continue in his old ways.

Scenario 2

In your department you have a colleague, Christine, who has a visible impairment. You notice that in both formal and informal discussions her contributions are often ignored, but later restated by other team members and then discussed. When her contributions are recognised, she is often patronised.

Christine has not said anything to you to suggest she is unhappy and she has not challenged any of the behaviour or comments.

- = What are the issues raised in this scenario? What effects may it have on promotion opportunities?
- = How would you respond? How do you think other people in the organisation should respond?
- = What can organisations do to promote a working environment where people's opinions are valued?

Some key points to consider

If Christine's contributions are not being valued, this is likely to reflect negatively on her future career opportunities, and create a negative working environment for other colleagues.

It is possible that even if Christine is unhappy with the behaviour of colleagues she may not feel confident enough to express it. If nobody else in the team meetings has supported her – simply by saying for example, “didn't Christine just say that a minute ago?” or “Please allow Christine to finish what she is saying” then she might feel that all her colleagues are impatient with her.

The chair of the meeting has a particular role to ensure that everyone gets a chance to speak, and if you are unhappy with the behaviour of colleagues at meetings you should either speak to the colleagues or speak to the chair.

You don't need Christine's permission to express your concern. If you are unhappy with the behaviour you should challenge it. We shouldn't wait for the disabled person to challenge disability discrimination, or women to challenge sexism or black people to challenge racism. It is the responsibility of us all.

Scenario 3

Two job seekers, Fatima Ali and Rukshana Hussein, have enrolled on a training programme. One of the local industrial employers who has a good relationship with the training provider has agreed to take two trainees on placement. When he hears that the names of the trainees are Fatima and Rukshana, he says, “Are they Muslim girls? Because I can't have people working on the shop floor in all those flowing robes and all that head gear. It's a danger to themselves and other people”.

He goes on to say that he is not prejudiced against Muslims, but unless they are prepared to wear overalls he cannot employ them.

- = What are the issues raised by the scenario?
- = What course of action could be taken by the training provider?

Some key points to consider

The employer is making a range of assumptions. Furthermore, he is drawing negative implications from them. Both of these issues need to be addressed.

In relation to assumptions – is the employer making assumptions about the candidate’s unwillingness to wear overalls? It may be considered that the employer is hiding behind ‘health and safety’ when the real issue is that he wants to actively discriminate against people of an ethnic minority background or a particular religious background.

Secondly, if a company wants a placement to happen then they will need to find ways of accommodating particular requirements. Have Fatima and Rukshana been asked about any adaptations that may be required to the environment? Although employers have an expertise into how things operate at the moment, this does not mean that they have considered alternative possibilities and adjustments that could be made to current practices.

Under the spirit of the Equality Act, providers are required in these situations to be more proactive, and move into solution-finding mode. In doing so, it is likely to be straightforward to make adaptations. For example, many big employers that require workers to wear a uniform have adapted it so women with particular religious observance requirements can feel comfortable with it. Some Muslim women wear clothing to cover the head and hair at appropriate times and there are many ways to cover the head and which comply with safety requirements and with religious requirements.

Not considering adaptations is likely to be indirect discrimination if Fatima and Rukshana were denied any opportunity without fully considering any alternatives.

Scenario 4

A senior management team is made up entirely of men. The team (supported by their board) is keen to see more women in senior positions. They set up a programme of management training and development for middle managers to improve their skills, knowledge and competence as managers. Using the positive action provision of the Equality Act, they decide to limit the participation to female middle managers. Fergus, who is also a middle manager, would like to be on the programme. He complains to HR when he is told that he is not allowed on the course.

= Fergus thinks that is discrimination and it shouldn’t be allowed. What do you think?

Some key points to consider

If an initiative is positive action, designed to address past disadvantage and the underrepresentation of women, it is allowable so long as it is a reasonable way to tackle the underrepresentation. Although Fergus would probably wish to claim that he was being excluded on the basis of his sex – and indeed he is – it is legitimate if it is positive action to address underrepresentation.

The employer will need to consider carefully the communications around this opportunity, and the work it does to support a productive work environment. This may include raising awareness about the current work barriers that are in place which have led to their being only men appointed, and how this is one of the ways of addressing this. Providing details of how the organisation is looking

to remove a range of barriers where underrepresentation is an issue will highlight that this is not an isolated initiative, but is situated within a number of other practices which are currently favouring men.

Scenario 5

Sam was born male but decided in her early 20s to spend the rest of her life as a woman. She started wearing women's clothing and lives her life as a woman. She has not undergone any medical intervention in relation to gender reassignment and she doesn't intend to. She has just completed a modern apprenticeship and has done very well.

SDS have asked her employer to suggest people as potential ambassadors for MA and they have said that although Sam has been outstanding, they think that because part of the role of the ambassadors is to boost apprenticeship opportunities, Sam might not be positively received by employers who are thinking of taking on apprentices. The employer also thinks that she won't be a role model that most apprentices will be able to relate to.

= How do you think SDS should respond?

Some key points to consider

If Sam is an outstanding apprentice and the only reason for not considering her as an ambassador is her transgender status then this would be a clear case of direct discrimination. Direct discrimination on this basis is never justifiable. Further, the Equality Act includes measures to promote equality of opportunity, and using Sam as an ambassador could promote the diverse range of learners that modern apprenticeships are available to and may give other trans learners the confidence to apply for a modern apprenticeship themselves.

SDS could therefore in this instance make it clear to the employer that Sam is exactly the sort of ambassador that they are after, and to discuss how the employer's assumptions could be deemed unlawful. SDS may also want to do some further advertising, explicitly asking for apprentices from underrepresented groups, and advertise these to the employers SDS works with.

What next?

This is the final section of this SDS Equality Toolkit. If you have any remaining questions and/or concerns after having used these case studies, the equality quiz, and scenarios then you may wish to review relevant sections of the toolkit, or approach the SDS Equalities Team to discuss further: equality@sds.co.uk

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