

## **EQUAL OPPORTUNITIES POLICY**

### **1. Principles**

The Commission is committed to equality of treatment of all staff<sup>1</sup>, and of those seeking employment with the Commission, regardless of their colour, gender, ethnic origin, disability, marital status, sexual orientation, age, nationality and religion.

The Commission is committed to offering to all staff appropriate opportunities for participation in its activities, and for personal development and career advancement.

The Commission is committed to complying with all current legislation concerning unfair discrimination, and to promoting best practice in equality of treatment.

All staff are expected to adopt these principles of equality when carrying out their duties for the Commission, particularly in casework and in dealings with the public.

The Commission will review this policy statement regularly to ensure compatibility with evolving legislation and developments in best practice.

### **2. Legislative Background**

There can be no precise definition of ‘best practice’. What constitutes best practice for the Commission can be defined only by benchmarking against the practices of other organisations. Legislation does, however, provide rules and regulations defining minimum standards of acceptable practice. The Commission’s policy has been developed within that legislative framework, recognising as minimum standards the following statutes and codes of practice:

- Equal Pay Act 1970
- Sex Discrimination Acts 1975 and 1986
- Race Relations Act 1976
- Race Relations (Amendment) Act 2000
- Disability Discrimination Act 1995
- Criminal Appeal Act 1995
- Human Rights Act 1998
- Sex Discrimination (Gender Reassignment) Regulations 1999
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003
- Commission for Racial Equality Codes of Practice
- Equal Opportunities Commission Code of Practice
- Disability Rights Commission Code of Practice
- European Union’s Recommendation and Code of Practice on the Protection of the Dignity of Women and Men at Work
- European Union Employment Framework Directive

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<sup>1</sup> Including Commissioner and temporary employees.

### 3. Definitions of Discrimination

#### *Direct Discrimination*

Section 1(1)(a) of the Race Relations Act 1976 states that a person discriminates against another if

“on racial grounds<sup>2</sup> he treats that other less favourably than he treats or would treat other persons.”

Section 1(1)(a) of the Sex Discrimination Act 1975 states that a person discriminates against a woman if

“on the grounds of her sex he treats her less favourably than he treats or would treat a man.”<sup>3</sup>

Section 2A(1) of the Sex Discrimination Act 1975 states that Person A discriminates against Person B if

“he treats B less favourably than he treats or would treat other persons, and does so on the grounds that B intends to undergo, is undergoing, or has undergone gender reassignment.”<sup>4</sup>

Section 3(1)(a) of the Sex Discrimination Act 1975 states that a person discriminates against a married person of either sex if

“on the ground of his or her marital status he treats that person less favourably than he treats or would treat an unmarried person of the same sex.”

#### *Indirect Discrimination*

The forms of discrimination noted above are known as “direct discrimination”. The Acts also define “indirect discrimination”.

Section 1(1)(b) of the Race Relations Act 1976 states that a person discriminates against another if

“he applies to that other a requirement or condition which he applies or would apply equally to a person not of the same racial group<sup>5</sup> as that other but

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<sup>2</sup> Section 3 of the RRA defines “racial grounds” as meaning colour, race, nationality or ethnic origins

<sup>3</sup> Section 2 of the RRA states that the provisions are to be read as applying equally to men

<sup>4</sup> The SDA was amended by the Sex Discrimination (Gender Reassignment) Regulations 1999 to align domestic law with the decision of the European Court of Justice in P v S and Cornwall County Council [1996] IRLR 347

<sup>5</sup> Section 3(1) of the RRA states that “racial group” means a group of persons defined by reference to colour, race, nationality or ethnic or national origins, and references to a person’s racial group refer to any racial group into which he falls.

- (i) which is such that the proportions of persons of the same racial group as that other who can comply with it is considerably smaller than the proportion of persons not of that racial group who can comply with it; and
- (ii) which he cannot show to be justifiable irrespective of the colour, race, nationality or ethnic or national origins of the person to whom it is applied; and
- (iii) which is to the detriment of that other because he cannot comply with it.”

Section 1(1)(b) of the Sex Discrimination Act 1975 states that a person discriminates against another if

“he applies to her a requirement or condition which he applies or would apply equally to a man but

- (i) which is such that the proportion of women who can comply with it is considerably smaller than the proportion of men who can comply with it, and
- (ii) which he cannot show to be justifiable irrespective of the sex of the person to whom it is applied, and
- (iii) which is to her detriment because she cannot comply with it.”

Section 3(1)(b) of the Sex Discrimination Act 1975 states that a person discriminates against a married person of either sex if

“he applies to that person a provision , criterion or practice which he applies or would apply equally to an unmarried person but

- (i) which is such that it would be to the detriment of a considerably larger proportion of married persons than of unmarried persons of the same sex, and
- (ii) which he cannot show to be justifiable irrespective of the marital status of the person to whom it is applied, and
- (iii) which is to that person’s detriment.”

### ***Disability Discrimination***

The Disability Discrimination Act 1995 does not contain a separate definition of indirect discrimination. The definition of “disability discrimination” includes elements of both direct and indirect discrimination.

Section 5(1) of the Disability Discrimination Act 1995 states that an employer discriminates against a disabled person if

- (i) for a reason which relates to the disabled person's disability, he treats him less favourably than he treats or would treat others to whom that reason does not or would not apply; and
- (ii) he cannot show that the treatment in question is justified.

Section 5(2) states that, for the purposes of Part II of the Act, an employer discriminates against a disabled person if

- (iii) he fails to comply with a section 6 duty<sup>6</sup> imposed on him in relation to the disabled person; and
- (iv) he cannot show that his failure to comply with that duty is justified.

### ***Discrimination by way of Victimisation***

This form of discrimination is provided for in section 2 of the Race Relations Act 1976, section 4 of the Sex Discrimination Act 1975 and section 55 of the Disability Discrimination Act 1995. Discrimination by way of victimisation occurs when an individual is treated less favourably than others are, or would be, treated in the same circumstances, because they have done, or intend to do -- or the person discriminating knows/suspects that they have done or intend to do -- any of the following in relation to that person or any other:

- (i) take proceedings under the legislation;
- (ii) give evidence or information in connection with proceedings under the legislation;
- (iii) otherwise do anything under or by reference to the legislation;
- (iv) allege that the person discriminating (or any other person) has committed an act which would amount to a contravention of the legislation.

### ***Harassment***

Although there is no statutory definition of harassment, it does constitute less favourable treatment within the meaning of the Sex Discrimination Act 1975<sup>7</sup> and the Race Relations Act 1976.<sup>8</sup> Harassment can be defined as conduct (verbal or non-verbal, public or private) by any group or individual that alarms, threatens, distresses, offends or humiliates another person, and which is unwelcome or unwanted.<sup>9</sup> Some of the more obvious examples of such behaviour may include unwelcome sexual attention, insults or ridicule of a racial nature, and comments about a person's sexual orientation.

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<sup>6</sup> Section 6 imposes a duty on employers to make adjustments in order to accommodate a disabled person's needs

<sup>7</sup> *Strathclyde Regional Council v Porcelli* [1986] IRLR 134.

<sup>8</sup> *British Leyland Cars Ltd v Brown* [1983] IRLR 193

<sup>9</sup> European Union Recommendation and Code of Practice on the Protection of the Dignity of Women and Men at Work

### ***Discrimination on Grounds of Sexual Orientation***

The Employment Equality (Sexual Orientation) Regulations 2003 prohibit both direct and indirect discrimination on the grounds of sexual orientation. The Regulations define sexual orientation as meaning “a sexual orientation towards persons of the same sex; persons of the opposite sex; or persons of the same sex and of the opposite sex”.

### ***Discrimination on Grounds of Religion or Belief***

The Employment Equality (Religion or Belief) Regulations 2003 prohibit direct and indirect discrimination on the grounds of religion or belief. The Regulations define religion and belief as meaning “any religion, religious belief, or similar philosophical belief”.

### ***Discrimination on Grounds of Age***

The EU Employment Framework Directive requires legislation by December 2006 that will prohibit direct and indirect discrimination on the grounds of age. The Directive is not limited to discrimination against older workers, or workers within a specified age group. All workers are protected, not merely at certain times in their lives. Differences of treatment on grounds of age will be allowed if, within the context of national law, they are objectively and reasonably justified by a legitimate aim, including employment policy, labour market and vocational training objectives. This Directive will affect retirement arrangements in due course.

## **4. Guidelines for Implementation**

The Head of HR is responsible for the implementation and day-to-day operation of the Commission’s Equal Opportunities Policy. This includes ensuring that all staff are aware of the policy; that they are aware of their rights and responsibilities under the law, and in respect of this policy; and that they understand their obligations and role in its implementation.

Failure to comply with the Commission’s Equal Opportunities Policy will be taken seriously and may result in action being taken in accordance with the Commission’s disciplinary procedures (see Staff Handbook project in DOCS). In addition, Commissioners and staff have personal liabilities under the relevant legislation and could be subject to legal proceedings for unlawful acts of discrimination. As the employer, the Commission could also be liable, but staff can be held to be solely liable in civil proceedings for such acts if the Commission can show that it has taken reasonable steps to prevent them.

Other responsibilities of the Head of HR include:

Recruitment: ensuring job opportunities are made widely available as appropriate. Job advertisements will state the Commission’s commitment to equal opportunities. Selection will be entirely on merit, determined by the requirements of the job. Those involved with recruitment, assessment and selection must have knowledge and experience of the Commission’s Equal Opportunities Policy; any training necessary should be provided.

**Terms and Conditions of Employment:** monitoring and amending terms and conditions of employment to ensure that they do not discriminate against any individual.

**Training and Development:** disseminating information regarding job vacancies, and training and development opportunities, so that all appropriate staff may apply for them. Training will be provided to all staff on the Commission’s Equal Opportunities Policy. The provision of training and development opportunities should comply with the principles of this policy.

**Redeployment:** exploring redeployment possibilities within the Commission for staff who can no longer perform their substantive role, e.g. because of a disability, or whose role is no longer required.

**Staff Grievances:** ensuring that all staff have access to the Commission’s grievance procedures, and taking prompt action to deal fairly and consistently with grievances. Complaints of discrimination or harassment will be dealt with in accordance with the Commission’s Policy and Procedure for dealing with Complaints of Harassment and Bullying (see Staff Handbook project in document #585691).

**Monitoring and Evaluation:** implementing the benchmarking system discussed in the Commission’s Equal Opportunities Monitoring Policy (see Staff Handbook in document #585699) to assess the effectiveness of the policy,

### **Sources**

<b>Chartered Institute of Personnel and Development</b>	Quick Facts: Harassment at Work
<b>Croner’s Reference Book for Employers</b>	Guide to Discrimination 1995
<b>Harvey on Industrial Relations and Employment Law</b>	
<b>Tolley’s Equal Opportunities Handbook</b>	2 <sup>nd</sup> Edition 2001: Martin Edwards and Michael Malone
<b>Commission for Racial Equality</b>	Code of Practice for the Elimination of Racial Discrimination and the Promotion of Equality of Opportunity in Employment
<b>Commission for Racial Equality</b>	Code of Practice on the Duty to Promote Race Equality
<b>Disability Rights Commission</b>	Code of Practice for the Elimination of Discrimination in the Field of Employment Against Disabled Persons or Persons who have had a disability
<b>Equal Opportunities Commission</b>	Code of Practice for the Elimination of Discrimination on the Grounds of Sex and Marriage and the Promotion of Equality of Opportunity in Employment
<b>Equal Opportunities Commission</b>	Good Practice Guide for Employers: Dealing with Sexual Harassment
<b>European Union</b>	Code of Practice on the Protection of the Dignity of Women and Men at Work