

Legal Services Commission

Equality and Diversity Policy Guidance 2007

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Introduction

The Legal Services Commission is committed to promoting equality and tackling discrimination to ensure access to legal services for vulnerable clients. We want legal aid services to take account of the diversity of local populations, without compromising quality of service. Services should be accessible to all legal aid clients and applicants for legal aid regardless of age, disability, gender, race, sexual orientation and religion or belief. We are also committed to promoting equality and contributing to tackling discrimination that creates barriers to career progression within the legal and advice sector.

As a provider of legal services, we recognise that you play an important role in promoting the principles of equality and diversity in the legal and advice service professions and meeting the diverse needs of clients.

You will be familiar with the requirement under the Specialist Quality Mark to have in place an equal opportunity policy. In the Unified Contract and General Criminal Contracts from April 2007 (“the Contracts”) we introduced a requirement that providers adopt an Equality and Diversity Policy. The purpose of the new policy is to encourage providers to prioritise good practice in delivering services to meet the diverse needs of clients.

The information contained in this document is intended to help you meet the requirements set out in the Contracts. This document is provided for the purpose of guidance and is not intended to lay down a binding course of action.

1. Contractual requirements

Summary of contract requirements

The relevant provisions of the Contracts concerning the Equality and Diversity Policy can be found in the Equality and Diversity Annex paras 3-10. Those provisions and the full text of the Contract's Standard Terms and Annexes are available on the LSC website at

http://www.legalservices.gov.uk/civil/unified_contract.asp or
http://www.legalservices.gov.uk/criminal/crime_contract.asp

You are required under the Contracts to have an Equality and Diversity Policy that sets out how you will promote equality and tackle discrimination in your organisation and meet the diverse needs of the clients you serve. In doing so your policy should be relevant to the size and nature of your organisation. Your policy should be in place by 1 October 2007, be a written document and available for audit on our request.

Equality and Diversity Annex para 5 sets out minimum content for your Equality and Diversity Policy:

- (a) a commitment to the principles of equality and diversity and to observing legislative requirements;
- (b) how you will meet the diverse needs of the clients and local community or communities that you serve;
- (c) how you will implement, monitor, evaluate and update the policy;
- (d) how you intend to ensure equality in relation to your personnel, Clients, potential Clients and other third parties;
- (e) how complaints and disciplinary issues are to be dealt with;
- (f) requirements that no members of your personnel unlawfully discriminate in dealings with other members of your personnel, Clients, potential Clients or other third parties.

We provide a Sample Equality and Diversity Policy at section 4 to illustrate what your policy may look like.

You must also have:

- an equality and diversity training plan; and
- a communications plan

These plans may be included in your Equality and Diversity Policy or as separate documents. Further information about this is provided in sections 2 and 3 below.

Other Equality and Diversity Policies

Where you have responsibility to produce another equal opportunity policy or equality and diversity policy (for example, under the LSC Specialist Quality Mark, by the Law Society, the Solicitors' Code of Conduct or another regulatory body) you may choose to have one policy to meet all of your requirements.

You are not required to have a separate policy so long as your policy meets the minimum requirements of the Contracts. We have tried to ensure that the requirements under the Contracts do not contradict similar requirements from other organisations. In common with other organisations we require that you comply with anti-discrimination legislation and best practice. We do however go further than some organisations by requiring that, in devising your policy, you pay particular attention to how you meet the needs of the diverse communities that you serve. This will give you an opportunity to demonstrate good customer service practice.

Monitoring and reviewing your policy

You should keep your Equality and Diversity Policy under review and monitor its appropriateness, making amendments to take account of any changes in your customer service and training needs and changes in anti-discrimination legislation.

Working with others as part of a consortium or through a sub-contractor

Where you are the lead member of a consortium or similar partnership arrangement with other providers you should ensure that the other members of the consortium/partnership arrangement implement policies and procedures that reflect the spirit of the Equality and Diversity Policy required under the Contracts. You should also ensure that the consortium/partnership as a whole meets the equality and diversity objectives required under the Contracts.

Where you have agreed that some Contract Work will be done through a sub-contractor, you should ensure that the sub-contractor implements policies and procedures that reflect the spirit of the Equality and Diversity Policy required under the Contracts.

You can do this by requiring in your consortium arrangements or contract terms that signatories have equality and diversity policies in place. When you tender for work with third parties you can require a copy of their equality policies as part of your requirements. You should keep a copy of any policies provided by other consortium/partners members or sub-contractors.

You can find more advice about including equality and diversity requirements in

procurement and partnership work from the equality commissions:

Commission for Racial Equality: <http://www.cre.gov.uk/index.html>

Disability Rights Commission: <http://www.drc-gb.org/>

Equal Opportunities Commission: <http://www.eoc.org.uk/>

Commission for Equality and Human Rights: <http://www.cehr.org.uk/>

This Commission will replace the Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission from October 2007. It will also provide advice on discrimination on the grounds of age, sexual orientation and religion or belief.

2. Serving your clients and community

Good customer service

As noted above, an important element of your Equality and Diversity Policy is how you meet the needs of the clients and local community or communities that you serve. The services you provide should be easily accessible to any member of the public regardless of age, disability, gender, race, sexual orientation and religion or belief. You should be able to provide an appropriate level of good customer service to any person who walks through your door regardless of their need.

The ethos of good customer service applies to all providers: everyone, regardless of background, is entitled to the same good level of customer service. But you can of course look to tailor your policies to the size and nature of your organisation and the services you provide.

We expect that the overwhelming majority of providers provide a good level of customer service as a matter of course. We suggest that you use your Equality and Diversity Policy to demonstrate your good practice and use it as an opportunity to review practice and policies to take account of changes in the local population you serve and up-date best practice.

We recommend that you pay particular attention to how you will meet the needs of:

- clients with a disability who may require a reasonable adjustment to be made; and
- clients who are unable to communicate effectively in English.

Bear in mind that under the Disability Discrimination Act 1995 service providers have a duty to anticipate the needs of disabled clients and to make their services accessible as appropriate: it is not necessary to know that you do have or are likely to have a particular number of disabled clients. Also remember that disability can take a number of forms: physical disability, sensory (eg visual, hearing or speech impairment); learning difficulty or disability, mental health condition or long-term health condition.

The following are examples of areas of good customer practice that we recommend you cover in your customer service policies:

1. Make sure that staff or partners, including reception staff, are sufficiently trained to deal with people with courtesy, politeness and consideration regardless of their background.

2. Take care to assess what clients can understand, and ask the client how they need to communicate – rather than making assumptions about this based on their ethnic origin, age or disability.
3. Ensure that your premises and services are accessible to people with disabilities, as far as possible. This does not always mean that you have to make expensive alterations or adjustments.
4. Ask your client if there are any adjustments that you can make to help him or her better access services, for example:
 - A client with a visual impairment may like to receive an audio message or may prefer to be contacted by email and receive electronic attachments.
 - A client with a hearing or speech impairment may prefer advice by email or textphone in replacement of a phone based service.
 - Car parking arrangements can be notified in advance for those clients with mobility difficulties.
 - If a client is required to attend a court or tribunal, plan ahead with court or tribunal staff to ensure that the premises are accessible, adequate communication facilities are available and that papers are provided in suitable formats.
 - Inform the LSC Regional office about any reasonable adjustments if your client requires correspondence in an alternative format from the LSC.

Under the terms of the Contracts you may claim for the reasonable costs of a British Sign Language interpreter or other Language Support Professional to where this service is required by a publicly funded client with a hearing impairment to communicate in relation to their case.

The Contracts also provides that you may claim for the reasonable costs of a foreign language interpretation/translation services as a disbursement if required by a publicly funded client to communicate in relation to their case. Further advice is available from your LSC Regional Office.

Finding out more about the diversity of your local community

You are likely to be familiar with the makeup of your client base. However if you want to find out more about your local population and follow changes in local demographics the following public sources are useful.

You can find detailed information about the demographics of your neighbourhood from the Neighbourhood Statistics section of the Office of National Statistics website:

<http://www.neighbourhood.statistics.gov.uk/dissemination/>

This information is based on National Census statistics and can be searched by postcode or town name or region.

In addition, you can find information about local populations on most local authority websites.

The Commission for Racial Equality has made information available on the Diversity and Integration pages its website about ethnic diversity in England and Wales, including local communities. Information includes detail about cultural differences and languages spoken by different ethnic groups.

<http://www.cre.gov.uk/diversity/map.html>

Communications plan

The Communications Plan is a plan to promote and raise awareness of policies and procedures for ensuring that your services are accessible. We recommend that you demonstrate your good customer service policies and practice in your Communications Plan. You may want to include the following in your plan:

- A list of policies and procedures for meeting diverse needs of clients;
- The steps you will take to put in place policies and procedures for making services accessible to clients;
- Who is responsible for these policies and procedures; and
- How you will make your policies and procedures openly available to the public:
 - this could be a statement on your website, or
 - a poster in your office, or
 - a leaflet for clients telling them who they should talk to if they are experiencing difficulties or wish to make a customer service complaint, including complaints about discrimination.

3. A fair and diverse workplace

Good workplace practices

There are strong business benefits in developing good practice that encourages fairness and diversity.

You can refer to the sample Equality and Diversity Policy as a checklist for what to include in your policy. A good policy would include policies and practices that are fair to:

- Job applicants

- Volunteers/ work experience staff
- Employees
- Self employed
- Contract and part-time workers
- Partners

A good policy would also cover the following topics:

- Arrangements for recruitment and selection
- Criteria used to select employees
- Terms and conditions of employment
- Access to training opportunities, promotions and transfers
- Grievances and disciplinary action
- Demotion
- Selection for redundancies
- Dress Codes
- Post employment activities such as the provision of references
- Bonus schemes and work allocation
- Any other benefits such as childcare provision or health care benefits

There is a vast amount of advice and guidance on how to develop equality and diversity policies and practices for the workplace. This guide does not seek to replace that advice. Some sources are provided below.

ACAS: <http://www.acas.org.uk/>

Provides information, good practice advice and guidance to employers and employees on a wide range of employment relation issues. ACAS equality and diversity advisers specialise in providing practical help. ACAS also runs Equality Direct, a helpline for questions on managing equality in the workplace.

National helpline _ 0845 7 47 47 47

Equality Direct _ 0845 6 00 34 44

Website www.acas.org.uk

Commission for Racial Equality: <http://www.cre.gov.uk/index.html>

Advice on race discrimination

Disability Rights Commission: <http://www.drc-gb.org/>

Advice on disability discrimination

Employers' Forum on Disability <http://www.employers-forum.co.uk>

The Employers' Forum on Disability is an employers' organisation focused on the issue of disability in the workplace. It has become an authoritative voice on best practice as it affects service provision as well as employment.

Equal Opportunities Commission: <http://www.eoc.org.uk/>

Advice on sex discrimination

Commission for Equality and Human Rights: <http://www.cehr.org.uk/>

This Commission will replace the Commission for Racial Equality, Disability Rights Commission and Equal Opportunities Commission from October 2007. It will also provide advice on discrimination on the grounds of age, sexual orientation and religion or belief.

Training plan

The Unified Contact requires that you have an equality and diversity training plan for your staff. Your training plan can be included in your Equality and Diversity Policy or a separate document.

Training is important to bring attention about the Equality and Diversity Policy to the attention of staff, partners, member or directors. As a minimum your Training Plan should include details of arrangements for training on the Policy itself, including customer service policies and procedures covered by your Communications Plan.

We suggest that you identify:

- who will be trained,
- in what topics;
- who is responsible for ensuring training takes place; and
- timelines for completing training.

When developing your Training Plan we expect that you will take account of your needs in relation to the size and nature of your organisation and what training you have already carried out.

Training need not be time-consuming or expensive; it can be delivered in-house or by an external provider. It is most effective if tailored to your staffs' needs taking into consideration the diversity of the clients you serve and staff roles.

You may wish to consider training needs in relation to the following:

General cultural awareness training: recognising how we form stereotypes and prejudice and how to avoid acting on them in our working lives, whether dealing with colleagues, clients or third parties. Cultural awareness training can cover discrimination on any ground: age, carers, disability, gender, race, sexual orientation and religion or belief.

Equality training: cultural awareness training is relevant for how you deal with clients as well as colleagues and third parties. However it is strongly recommended that you also provide training on practical steps that staff can take in relation to customer service and in the workplace that is appropriate to their job roles.

with an emphasis on practical steps that you can take to put into practice the

Customer service: practical information for all members of staff on how to meet the client need, with particular attention to the clients you serve taking account of age, carers, disability, gender, race, sexual orientation and religion or belief. In respect of disability, pay attention to the different types of disability and to steps that you may need to take to make reasonable adjustments.

Employment: practical information for members of staff with managerial responsibility on how to meet employee diversity needs, with particular attention to responsibilities relating to age, carers, disability, gender, race, sexual orientation and religion or belief. Again, in respect of disability, pay attention to different types of disability and to steps that you may need to take to make reasonable adjustments.

However you tailor training to the needs of your organisation you should aim to ensure that you have as an organisation an adequate knowledge of the different needs people in relation to age, carers, disability, gender, race, sexual orientation and religion or belief. With regard to disability you should pay attention to different forms of disability and implications of each for clients, employees and partners.

4. Sample Equality and Diversity Policy

We have drafted the following sample Equality and Diversity Policy to help you meet the requirements of the Unified Contact. You may want to use it as a template for your own policy, adapting it as appropriate, or as a checklist to evaluate your own policy.

1 Your commitment to equality and diversity

(a) Commitment

We, [firm]/[organisation], are committed to eliminating unlawful discrimination and to promoting equality and diversity within our policies, practices and procedures.

We are also committed to promoting equality and diversity in the [firm]/[organisation].

This applies to our professional dealings with clients, staff and [partners]/[members]/ [directors], other solicitors, barristers, and third parties.

We shall treat everyone equally and with the same attention, courtesy and respect regardless of:

- (a) sex (including marital status, gender reassignment, pregnancy, maternity and paternity);
- (b) sexual orientation (including civil partnership status);
- (c) race or racial group (including colour, nationality and ethnic or national origins);
- (d) religion or belief;
- (e) age;
- (f) caring responsibility; or
- (g) disability.

(b) Legislation

We will take all reasonable steps to ensure that we and our staff do not unlawfully discriminate under:

- (a) the Equal Pay Act 1970;
- (b) the Sex Discrimination Act 1975;

- (c) the Race Relations Act 1976;
- (d) the Disability Discrimination Act 1995;
- (e) the Employment Rights Act 1996;
- (f) the Human Rights Act 1998;
- (g) the Part-Time Workers (Prevention of Less Favourable Treatment) Regulations 2000;
- (h) the Fixed-Term Employees (Prevention of Less Favourable Treatment) Regulations 2000;
- (i) the Employment Equality (Sexual Orientation) Regulations 2003;
- (j) the Employment Equality (Religion or Belief Act) Regulations 2003;
- (k) the Work and Families Act 2006;
- (l) the Employment Equality (Age) Regulations 2006; and
- (m) any other relevant legislation in force from time to time relating to discrimination in employment and the provision of goods, facilities or services.

2 Meeting Clients Needs

(a) General statement

As a provider of publicly funded legal services the [firm]/[organisation] will treat all clients equally and fairly and not unlawfully discriminate against them. The [firm]/[organisation] will also, wherever possible, take steps to promote equal opportunity in relation to access to the legal services that we provide, taking account of the diversity of the communities that we serve.

(b) Identifying clients needs

The [firm]/[organisation] is committed to meeting the diverse needs of clients. We will take steps to identify the needs of clients in our community and develop policies and procedures setting out how we will meet clients' needs and for entering the services we provide are accessible to all. We will take account, in particular, the needs of clients with a disability and clients who are unable to communicate effectively in English. We will consider whether particular groups are predominant within our client base and devise appropriate policies to meet their needs: including men and women; carers; children; the elderly; members of

religious groups; ethnic groups or nationalities; and lesbian, gay or transgender people.

(c) Communications Plan

The [firm]/[organisation] will devise policies and procedures to promote and raise awareness of policies and procedures for ensuring that our services are accessible for a diverse range of clients. Our communications plan sets out what steps we have taken or/ and will take to put in place customer service policies and procedures to make our services accessible to clients. It contains a list of policies and procedures; information about what steps we will take to put them in place; who is responsible for them; and how we will make our policies and procedures openly available for the public.

Employees and partners/[members]/[directors] will be informed of the Communications Plan and training provided where appropriate to ensure that it is effectively implemented. The Communications Plan is appended to this Policy.

3. Dealings with third parties

(a) General statement

The [firm]/[organisation] will not unlawfully discriminate in dealings with third parties. This applies to dealings with other legal service providers and general procurement.

(b) Dealings with barristers

The [firm]/[organisation] will instruct barristers on the basis of their skill, experience and ability and not unlawfully discriminate, or encourage barristers' clerks to unlawfully discriminate on the grounds of their age; gender; marital status; race; religion or belief; sexual orientation or on the grounds of disability.

4 Employment

(a) General statement

As an employer, the [firm]/[organisation] will treat all employees and job applicants equally and fairly and not unlawfully discriminate against them. This applies equally to voluntary positions and anyone undertaking work experience with us. This will, for example, include arrangements for recruitment and selection, terms and conditions of employment, access to training opportunities, access to promotion and transfers, grievance and disciplinary processes, demotions, selection for redundancies, dress code, references, bonus schemes, work allocation and any other employment related activities.

(b) Recruitment and selection

This [firm]/[organisation] recognises the benefits of having a diverse workforce and will take steps to ensure that:

- (i) we endeavour to recruit from the widest pool of qualified candidates practicable;

- (ii) employment opportunities are open and accessible to all on the basis of their individual qualities and personal merit;
- (iii) where appropriate, positive action measures are taken to attract applications from all sections of society and especially from those groups which are underrepresented in the workforce;
- (iv) selection criteria and processes do not unlawfully discriminate on the grounds of sex (including marital status, gender reassignment, pregnancy, maternity and paternity), sexual orientation (including civil partnership status), religion or belief, age or disability; other than in those instances where the [firm]/[organisation] is exercising permitted positive action or a permitted exemption;
- (v) wherever appropriate and necessary, lawful exemptions (genuine occupational requirements) will be used to recruit suitable staff to meet the special needs of particular groups;
- (vi) all recruitment agencies acting for the [firm]/[organisation] are aware of requirements not to discriminate and to act accordingly.

(c) Conditions of service

The [firm]/[organisation] will treat all employees equally and create a working environment which is free from unlawful discrimination and which respects the diverse backgrounds and beliefs of employees. Terms and conditions of service for employees will comply with anti-discrimination legislation. The provision of benefits such as flexible working hours, maternity and other leave arrangements, performance appraisal systems, dress code, bonus schemes and any other conditions of employment will not unlawfully discriminate against any employee on the grounds of their age; gender; marital status; race; religion or belief; sexual orientation or on the grounds of disability.

Where appropriate and necessary, the firm will endeavour to provide appropriate facilities and conditions of service which take into account the specific needs of employees which arise from their ethnic or cultural background; gender; responsibilities as carers; disability; religion or belief or sexual orientation.

(d) Promotion and career development

Promotion within the [firm]/[organisation] (including to [partners]/[members]/[directors]) will be made without reference to any of the forbidden grounds and will be based solely on merit. The selection criteria and processes for recruitment and promotion will be kept under review to ensure that there is no unjustifiably discriminatory impact on any particular group.

While positive action measures may be taken in accordance with relevant anti-discrimination legislation to encourage applications from under-represented groups, appointments to all jobs will be based solely on merit. All employees will have equal access to training and other career development opportunities appropriate to their experience and abilities. However, the [firm]/[organisation] will take appropriate positive action measures (as permitted by the anti-discrimination legislation) to provide special training and support for groups which are under-represented in the workforce and encourage them to take up training and career development opportunities.

(e) Training Plan

The [firm]/[organisation] will identify equality and diversity training needs and draw up a plan to address these as appropriate to their responsibilities. The plan will include details of the sort of training that will be provided, who will be trained, when training will be provided and who is responsible in the [firm]/[organisation] for ensuring that training is delivered. Employees and [partners]/[members]/[directors] will be informed of this equality and diversity policy and training plan. The Training Plan is appended to this Policy.

(f) Working with other organisations

All those who act on the [firm's]/[organisation's] behalf will be informed of this equality and diversity policy and will be expected to pay due regard to it when conducting business on the [firm's]/[organisation's] behalf. In all its dealings, including those with partners, any consortium members, suppliers, sub-contractors and recruitment agencies, the [firm]/[organisation] will seek to promote the principles of equality and diversity.

5. Implementing the policy

(a) Responsibility

Ultimate responsibility for implementing the policy rests with the [firm]/[organisation]. The [firm]/[organisation] will appoint a senior person within it to be responsible for the operation of the policy. All employees and [partners]/[members]/[directors] of the [firm]/[organisation] are expected to pay due regard to the provisions of this policy and are responsible for ensuring compliance with it when undertaking their jobs or representing the [firm]/[organisation].

Acts of unlawful discrimination on any of the forbidden grounds by employees or [partners]/[members]/[directors] of the [firm]/[organisation] will result in disciplinary action. Failure to comply with this policy will be treated in a similar fashion. The policy applies to all who are employed in the [firm]/[organisation] and to all [partners]/[members]/[directors].

Acts of unlawful discrimination on any of the forbidden grounds

by those acting on behalf of the [firm]/[organisation] will lead to appropriate action by the Legal Services Commission.

(b) Complaints of discrimination

The [firm]/[organisation] will treat seriously all complaints of unlawful discrimination on any of the forbidden grounds made by employees, [partners]/[members]/[directors], clients, barristers or other third parties and will take action where appropriate.

All complaints will be investigated in accordance with the [firm's]/[organisation's] grievance or complaints procedure and the complainant will be informed of the outcome.

We will also monitor the number and outcome of complaints of discrimination made by staff, clients, [partners]/[members]/[directors], barristers, and other third parties.

(c) Monitoring

(1) The [firm]/[organisation] will monitor and record equal opportunities information about staff, [partners]/[members]/[directors] on the basis of age, gender, ethnicity, and disability.

(2) Where it is possible to do so, and where doing so will not cause offence or discomfort to those whom it is intended to protect, we will monitor the sexual orientation and religion or belief of staff, [partners]/[members]/[directors] so as to ensure that they are not being discriminated against in terms of the opportunities or benefits available to them. We are aware that individuals may choose not to disclose their sexual orientation or religion or belief and that care will be taken to avoid inadvertent discrimination in such cases.

We will store equal opportunities data as confidential personal data and restrict access to this information. Equal opportunities information will be used for exclusively for the purposes of equal opportunities monitoring and have no bearing on opportunities or benefits.

The [firm]/[organisation] will monitor all elements of:

- (i) recruitment and selection process (applicants and existing staff and [partners]/[members]/[directors]);
- (ii) promotion and transfer;
- (iii) training (all training opportunities not restricted to equality and diversity training);
- (iv) terms and conditions of employment;
- (v) take up of benefits (work life balance policies eg flexible working requests)

- (vi) grievance and disciplinary procedures;
- (vii) resignations, redundancies, and dismissals.

The [firm]/[organisation] will provide equal opportunities information to the Legal Services Commission as required in relation to personnel and clients under the terms of the LSC Contracts.

(d) Review

The [firm]/[organisation] will review the operation of this policy not less than twice a year (or more regularly if we identify any non-compliance or problem concerning equality and diversity issues with clients or personnel). We will take remedial action if we discover non-compliance under this policy or barriers to equal opportunities. When reviewing the policy we will consider the outcome of monitoring and review actions under our communications and training plans..

5. Glossary of terms used in this Guidance

'Diversity' is a broader term than 'equality' or 'equal opportunities' or 'equality of opportunity'. Diversity policies encompass all individuals by recognising that all of us have different characteristics which make us unique and that organisations benefit from taking these into account when offering services or employing people. In contrast to equal opportunity, diversity is not about treating people equally but rather it is about recognising and responding to different needs, experiences and aspirations and acting accordingly. Diversity is complimentary to equality of opportunity.

'Equal opportunities monitoring' is the collection and analysis of information about a person that is used in order to check that a policy or procedure does not have an adverse impact on a particular group of people or amounts to unlawful discrimination. Information can be collected on race, disability, gender, age, and in some circumstances sexual orientation and religion or belief.

'Unlawful discrimination' includes 'direct discrimination', 'indirect discrimination', 'victimisation' and 'harassment'.

'Direct discrimination' occurs where a person is treated less favourably on the grounds of race, racial group, colour, ethnic or national origins, sex, pregnancy, marital status, disability or sexual orientation or religion or belief.

'Indirect discrimination' occurs where an apparently neutral provision, criterion or practice would put a substantially higher proportion of the members of one sex, or people of a particular racial group or religion or belief, sexual orientation or with a disability at a particular disadvantage compared with other persons unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.

'Victimisation' occurs where a person is treated less favourably because she or he has made a complaint of discrimination. This also applies to individuals who may have assisted or supported the complainant, for example, as a witness or by showing sympathy.

'Harassment' occurs when unwanted conduct takes place with the purpose or effect of violating the dignity of a person and of creating an intimidating, hostile, degrading, humiliating or offensive environment. Harassment may involve physical acts or verbal and non-verbal communications and gestures. This will include physical, verbal and non-verbal acts.

'Positive action' is where you encourage the participation of or access to services for members of under-represented groups. Positive action is not to be confused with positive discrimination.

'Positive discrimination' is where you make a decision in someone's favour because of his or her particular characteristic, eg race, gender or disability. Positive discrimination is usually unlawful, unless it falls within one of the very limited exceptions contained in the anti-discrimination legislation in relation to disability or as a genuine occupation requirement.

Positive action is often used as a way to minimise the effects and outcomes of past discrimination on groups. In some limited circumstances, employers or training bodies are allowed to take special measures relating to access to training for particular work, or encouragement to apply for particular posts.

For example, where women are under-represented in senior management posts, running special training for women to encourage them to apply for senior posts is an example of positive action and lawful. However, the appointment of a woman to a senior post solely on the basis of her gender would be an example of positive discrimination and would be unlawful.

'Genuine occupational requirement' is an express exception to the positive discriminate on a particular ground. However, there are some very limited circumstances in which it may be lawful to discriminate on grounds such as race, gender, disability, sexual orientation or religion. For example, where being of a particular racial or religious origin is an essential requirement for the job, or for reasons of decency or privacy. For detailed information on exceptions please refer to the appropriate anti-discrimination legislation.

If you require for information about the contents of this guidance or require this publication in an alternative format please contact:

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