EQUALITY AND DIVERSITY POLICY FOR EMPLOYEES

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<th>HR Policy:</th>
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<tr>
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<td>July 2014 (Version 1)</td>
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**Supersedes:** Version 1  
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### APPROVAL RECORD

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1. **POLICY STATEMENT**
To ensure that no potential or actual employee receives less favourable treatment on the 
grounds of age, disability, sex, sexual orientation, race, colour, nationality, religion or belief, 
national or ethnic origins, gender reassignment, pregnancy or maternity, marriage or civil partnership or trade union membership.
- To support activity undertaken within the remit of the CCG’s Equality and Inclusion Strategy
- To ensure this principle is applied in respect of all conditions of work and any rules, conditions or requirements which cannot be shown to be justifiable in job related terms
- To meet the three aims of the Public Sector Equality Duty as set out in section 149 of the Equality Act 2010
- To meet the requirements of the Equality Act 2010, Employment Statutory Code of Practice 2010

1.1 **Who the policy applies to:**
All employees, officers and potential employees of the CCG.

2. **INTRODUCTION**
This policy is applicable to employees of the CCG. A separate Equality and Inclusion Strategy is published by the CCG which relates to Commissioned Providers, Patients and Employees.

The Clinical Commissioning Group (CCG) sets high standards of performance and behaviour from the people it employs. As an employer the CCG is committed to Equality and Diversity.

The seriousness of this commitment is reflected in the CCG’s policies and procedures and it recognises that unfair discrimination is totally unacceptable.

**Background**
This policy is developed in accordance with the requirements of the following legislation:-
- Equality Act 2010
- East Lancashire CCG and Blackburn with Darwen CCG Joint Equality and Inclusion Strategy and Action Plan
- The Equality Delivery System 2 – Goals 3 and 4

3. **PURPOSE/RATIONALE**
To provide a framework to ensure that all employees and prospective employees are treated equally irrespective of their protected characteristics or trade union membership, as set out in the Equality Act 2010 and the Human Rights Act 1998.

4. **GLOSSARY OF TERMS**
**Protected Groups** – these are groups of people who possess the same protected characteristic as set out in the Equality Act 2010 these are: Age, Disability, Gender Reassignment, Marriage and Civil Partnership, Pregnancy and Maternity, Race, Religion or Belief, Sex and Sexual Orientation.

**Discrimination** – In this policy discrimination is used as an overarching term and covers both Direct and Indirect Discrimination.

**Direct Discrimination** – Is when one person receives less favourable treatment than another person because of a protected characteristic. For example, refusing to employ someone because of their colour, race, marital status, or disability.
**Direct Discrimination by Association** – This means that the law also gives protection from less favourable treatment because the person is associated with someone who has a protected characteristic.

**Indirect Discrimination** – Indirect discrimination is when there’s a practice, policy or rule which applies to everyone in the same way, but it has a worse effect on some people than others.

**Sexual Orientation** – An awareness of expressions, actions, declarations, attitudes or behaviours linked to an awareness of own or others sexual identity. These identities include lesbians and gay men, bisexual men and women and heterosexual men and women.

**Harassment** – The standard definition for harassment is unwanted conduct on the grounds of race, gender, sexual orientation etc. which has the purpose or effect of either violating the claimant's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment for them.

**Victimisation** – the victimisation provisions with the Act are there to protect people from retribution for:
- using or intending to use their rights under the Act;
- supporting another person’s rights under the Act;
- or doing something else connected to the Act

Victimisation occurs if person A subjects person B to a detriment because B has either done a protected act or A believes that B has done or may do a protected act. Protected acts are:
- Bringing legal proceedings under the Equality Act
- Giving evidence or information in connection with this Act
- Making an allegation that A or another person has breached this Act

**Disability** – disability is defined as where a person has a physical or mental impairment and this has a substantial and long term adverse effect on the person's ability to carry out normal day to day activities. Protection is only given to disabled persons in accordance with the Equality Act 2010.

**Discrimination Arising from Disability** – this happens if one person or the CCG discriminate against another person or treats them less favourable because of something arising out of person’s disability, and cannot show that the treatment is a proportionate mean of achieving a legitimate aim.

**Disability Employment Advisor** – if you need extra employment support because of a disability or health condition, your local Jobcentre can put you in touch with a Disability Employment Adviser (DEA). DEAs can also work with people in employment who may need support to keep their jobs. DEAs should be able to help you draw up an action plan for finding or staying in work. They can tell you about suitable jobs, further assessments and what ongoing support is available. They work closely with you and your employers to help you do your job efficiently and with support. DEAs can help find solutions to issues such as accessibility and adapting the workplace environment.

**Equality Analysis and Impact Assessments and Human Rights screening** – these are systematic ways of determining whether if any decisions could have an impact on any of the groups protected by the equality act. This includes impacts for both communities and employees. These assessments are one way for public bodies to demonstrate how it is meeting the three aims of the Public Sector Equality Duty and this process helps demonstrate due regard.
**Public Sector Equality Duty** – Public authorities must, when exercising their functions have ‘due regard’ to the need to:
Aim 1 – eliminate discrimination, harassment, victimisation and other unlawful acts
Aim 2 – advance equality of opportunity between people who share a protected characteristic and who don’t share it
Aim 3 – foster good relations between people who share a protected characteristic and those who don’t share it

**Human Rights** – these are rights and freedoms that belong to all individuals regardless of their nationality and citizenship. They are fundamentally important in maintaining a fair and civilised society.

**Gender Reassignment** – this is defined as when a person has, proposed, started, or completed a process to change their sex. It is no longer necessary to undergo a medical procedure to be protected from discrimination.

**Transsexual People** – these are the individuals who establish a permanent identity with the gender opposite to that which they were assigned at birth.

**Reasonable Adjustment** – the reasonable adjustment duty is there to help to remove any barriers or practices that put disabled people at a disadvantage because of their disability. Employers and service providers of service have a duty to make a reasonable adjustment to avoid putting a disabled person at a disadvantage compared to non-disabled people. A failure to make a reasonable adjustment when a person has duty to make one will be unlawful discrimination.

**Positive Action** – is lawful when recruiting – this means that the CCG can recruit or promote a candidate who is equally qualified as another candidate, if the employer reasonably thinks the candidate, has a protected characteristic that is underrepresented in the workforce; or that people with that characteristic suffer a disadvantage connected to that characteristic.

5. **RESPONSIBILITIES**
The Chief Officer/Accountable Officer will be accountable for the implementation of this policy.

Human Resources will support an investigation into employee/applicant allegations of not being offered equal opportunities to see if there are any policies or criteria which are not justifiable. In addition the Customer Care team will support an investigation into patient complaints regarding discrimination.

Managers and Supervisors are responsible for:
- Ensuring that this policy is implemented throughout their areas of responsibility.
- Assisting in the monitoring for mandated requirements in line with Public Sector Equality Duty and NHS England
- Monitoring of mandated contract requirements for commissioned services relating to the Public Sector Equality Duty
- Ensuring that all the staff for whom they are responsible are aware of their responsibilities under this policy
- Ensuring that all job descriptions reflect the CCG’s policy
- Ensuring that accurate records of employment decisions are maintained in line with this policy and the CCG’s recruitment and retention processes
- Maintaining and submitting information on job applicants and existing staff for monitoring purposes
- Promoting a culture where discrimination is unacceptable and diversity and equality are promoted to meet the Three Aims of the Public Sector Equality Duty
- Ensure that mandated equality legislation is implemented within the CCG
All employees are responsible for:-

- Familiarising themselves with the Equality and Diversity Policy and for complying with it
- Employees should inform their line manager if they know or suspect that discrimination/harassment is occurring
- Co-operate in the promotion of Equality and Diversity
- Not induce or attempt to induce other employees to practice discrimination

Trades Union are responsible for ensuring that their staff representatives and officials are aware of and familiar with the policy and have received appropriate training.

The CCG accepts that in order to demonstrate due regard for the Public Sector Equality Duty it must undertake equality analysis to assess their activities and to set out how they will monitor and possible negative impact on equality. Equality impact and risk assessments will be carried out on all CCG Human Resource processes and practices.

6. EMPLOYMENT

The Equality and Diversity Policy applies to all recruitment to ensure that job applicants and potential future employees are not discriminated against in line with the Equality Act 2010 and NHS Recruitment Standards.

The CCG also wishes to ensure the highest quality of candidates and will take positive action in line with the Equality Act 2010 section 159 for recruitment and promotion – this means that the CCG can recruit or promote a candidate who is equally qualified as another candidate, if the employer reasonably thinks the candidate, has a protected characteristic that is underrepresented in the workforce; or that people with that characteristic suffer a disadvantage connected to that characteristic.

All applicants for posts with the CCG shall be given as much clear, accurate information about posts in advertisements, job descriptions and interviews necessary for them to be able to gauge their suitability for that post. All applicants shall be informed that the CCG operates an Equality and Diversity Policy and such information will be conveyed in application forms.

Recruitment literature will not imply that there is a preference for one group of applicants unless there is a genuine occupational requirement where the CCG can demonstrate that it requires a person to have a particular protected characteristic, and in doing so the CCG can show that it has had regard to the nature or context of the work as set out below:

- It is an occupational requirement
- The application of the requirement is a proportionate means of achieving a legitimate aim

The selection process is of crucial importance and must be carried out according to objective job-related criteria. Written person specifications shall be devised and used by managers and supervisors in respect of all vacancies. The CCG will, through appropriate training, ensure that managers and supervisors making selection decisions do not lead to discrimination, whether consciously or unconsciously in making these decisions.

Where appropriate, reasonable adjustments will be put in place from the time a job description is written through the whole recruitment process to ensure that no potential employees are discriminated against in the interview process, where a disabled person meets the minimum requirements of the role they will be automatically be offered an interview in line with the ‘two ticks’ status and the CCG Equality and Inclusion Strategy. Selection tests shall relate to the job requirements, i.e. a test should measure an applicant’s ability to do, or train for, the job in question.
As part of the recruitment and selection process, managers must record decisions reached and the reasons for those decisions. These records must be retained for a minimum period of six months.

All new employees shall be provided with access to a copy of the Equality and Diversity policy and Equality and Inclusion Strategy.

7. TRAINING, PROMOTION AND CAREER DEVELOPMENT

The CCG will not discriminate in the provision of training and development opportunities. Appropriate training will be provided in an equal basis to enable employees to perform their jobs effectively and to pursue career development opportunities. The CCG will provide training to ensure quality of opportunity in promotion and career development in line with the Equality Act 2010, Employment Statutory Code of Practice (2011).

Age limits for entry to training schemes will not be restrictive to exclude certain groups of staff unless it can be objectively justified. In devising in-house courses, consideration will be given to potential problems of access of prospective learners and reasonable adjustments will be put in place to support employee’s access to learning and development.

The CCG will adopt the mandated Equality Delivery System (EDS), which has been adopted across NHS organisations. The aim of EDS is to improve the services they provide for their local communities and provide better working environments, free of discrimination, for those who work in the NHS, while meeting the requirements of the Equality Act 2010.

8. THE TERMS AND CONDITIONS OF SERVICE AND FACILITIES

The implementation of all terms and conditions of service will be non-discriminatory and applied fairly to all workers.

The CCG will not discriminate in the provision of access to general staff facilities and benefits regardless of their protected characteristic.

What is meant by facilities?

In relation to the Equality Act 2010 facilities can be physical features within the workplace that enable a worker to carry out their work, or they can be ‘extras’ that you provide for your workers. Depending on the size and nature of your organisation, facilities can include:

- Physical access to building
- Access to computers, mobile phone and other technology
- Toilet or tea and coffee making facilities
- Parking for cars or bicycles
- Prayer and quiet rooms
- Facilities for breastfeeding mothers
- Health clinics and occupational health services
- Facilities for diabetic staff to test blood sugar and inject insulin
- Auxiliary aid to support or assist a disabled worker

The CCG Governing Body and employees are responsible for avoiding unlawful discrimination in relation to allowing workers to access to facilities at work. The Equality Act does not stop managers from giving different workers different levels of access to facilities for a reason unrelated to any protected characteristic, such as seniority within an organisation or the nature of the job someone is doing.

However, the CCG Governing Body and managers need to make sure that any local policies and roles about who has access to what facilities are not in themselves unlawfully discriminatory, undertaking equality analysis and impact assessment on the policy will help you avoid any potential hidden discrimination (indirect and direct).
9. SINGLE SEX FACILITIES AND TRANSSEXUAL WORKERS
All CCG managers of an employee(s) who is transitioning will abide by requirements set out in the Equality Act 2010 such as access to single-sex facilities for people that identify as either men or women.

A single-sex facility is one that is used only by either men or women such as toilets, changing rooms and shower areas. If staff are undergoing gender reassignment then they are protected from unlawful discrimination because of their protected characteristic.

This means the member of staff must be able to use the facilities appropriate to the sex in which they identify. However, sometimes whilst the person is undergoing gender reassignment they may wish to use separate facilities this should not be imposed on them as that would be discriminatory. This means that managers cannot insist that a transsexual person uses separate facilities in the long term, for example, an accessible toilet for disabled people, as this would amount to unlawful discrimination.

It’s important that managers discuss with the transsexual person how they wish you to deal with practical matters at work arising from their gender reassignment. This includes making sure that other staffs behave in a way that avoids unlawful discrimination.

10. MODERN DAY SLAVERY ACT 2015
Slavery is a violation of a person’s human rights. It can take the form of human trafficking, forced labour, bonded labour, forced or servile marriage, descent-based slavery and domestic slavery. A person is considered to be in modern slavery if they are forced to work through mental or physical threat, owned or controlled by an ‘employee’, usually through mental or physical abuse, dehumanised – treated as a commodity or sold or bought as ‘property’ and or physically constrained or has restricted placed on their freedom or movement.

The CCG will publish a statement of principles in regard to the Modern Day Slavery Act.

11. AGE DISCRIMINATION
Age is a protected characteristic under the Equality Act 2010. The CCG is committed to promoting age diversity by valuing contributions of employees irrespective of age or youth and by challenging the general acceptance of ‘ageism’ to eliminate age stereotyping.

The CCG aims to ensure that employment opportunities, career progression, employee support systems and service delivery are equally accessible to all people regardless of their age. The CCG will ensure that their employment practices related to age prohibit unfair discrimination in:-
- Promotion or career progression
- Recruitment and selection
- Redundancy
- Retirement planning and Retirement
- Support systems
- Training and development

12. DISABILITY
The Equality Act 2010 says a disabled person is someone with a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.
Examples include: Cancer, HIV infection, and multiple sclerosis are deemed disabilities under the Act from the point of diagnosis. In some circumstances, people who have a sight impairment are automatically treated under the Act as being disabled. ‘Hidden’ impairments (for example, mental illness or mental health conditions, diabetes and epilepsy) may count as disabilities where they meet the definition in the Act. Progressive conditions and those with fluctuating or recurring effects will amount to disabilities in certain circumstances.

13. SEXUAL ORIENTATION
Discrimination on the grounds of a person’s sexual orientation is unlawful and the CCG is committed to ensuring equal treatment for all its employees.

If a worker is harassed by their colleagues or manager because of an inaccurate perception regarding their sexual orientation or by association, they may have grounds to complain to an employment tribunal if the CCG fails to deal with the matter in a timely and proper manner.

The CCG Harassment and Bullying at Work Policy, provides guidance for staff on what to do if they feel they have been discriminated against, harassed or victimised. Staff should feel confident that their complaint will be treated seriously, that managers will deal with the cause of the problem and that the process will be undertaken in confidence.

14. MARRIAGE AND CIVIL PARTNERSHIP
A person who is married or in a civil partnership are protected from discrimination under the Equality Act 2010. Marriage currently covers any formal union of a man and a woman which is legally recognised in UK as a marriage. A civil partnership refers to a registered civil partnership for same sex couples recognised under the Civil Partnership Act 2004.

Civil partners have equal treatment in a wide range of matters with married couples, including employment benefits such as occupational pension benefits and leave for family purposes.

15. SEX
Sex (male and female) are protected under the Equality Act 2010. The CCG is committed to eliminating discrimination in relation to pay and the gender pay gap through the Agenda for Change Job Evaluation, a process developed in partnership between the Department of Health and Trade Unions to eliminate inequalities with jobs of the same demands being grouped together on the same pay bands.

The term intersex is a term adopted for people whose biological sex cannot be classified as clearly male or female. An intersex person may have the biological attributes of both sexes or lack some of the biological attributes considered necessary to be defined as one or the other sex. Under the Equality Act 2010, Intersex is not specifically a protected characteristic.

Non-binary is a term that some people self-identify with that regard themselves as gender neutral or falling on spectrum between male and female. Under the Equality Act 2010, Non binary is not specifically a protected characteristic.

Currently there is no legislation that specifically protects intersex and non-binary people. This policy will seek to not discriminate anyone of the basis of their sex or intersex status or gender identity.
16. **GENDER REASSIGNMENT**

People proposing to, undergoing gender reassignment or have undergone gender reassignment are protected under the Equality Act 2010.

Information about a person’s Gender recognition status is highly sensitive information. Governing Body members and employees must make sure they maintain the privacy and confidentiality of transsexual workers in line with the Equality Act 2010, the Gender Recognition Act 2004, Data Protection Act 1998 and article 8 of the Human Rights Act. This safeguards the privacy of transsexuals by prohibiting the disclosure of information regarding the application for gender recognition or gender history of an applicant.

It is also important to note that where a member of staff passes on this information to another person without the express permission of the person to whom it refers to then that person may be liable to a financial penalties and or a custodial prison sentence.

The CCG will see this as a serious breach of confidentiality and will invoke the Disciplinary Procedure should this occur.

17. **RACE**

Race includes colour, nationality and ethnic or national origins. Race is protected under the Equality Act 2010.

The CCG will carry out annual Workforce Race Equality Standard (WRES) which became mandatory in April 2015. The CCG supports the WRES with the aim to ensure employees from black and minority ethnic (BME) backgrounds have equal access to career opportunities and receive fair treatment in the workplace. WRES is now part of the NHS contract. The CCG will comply with NHSE requirements to publish the WRES on the CCG website whilst recognising that not all staff may wish to disclose their ethnic background. The CCG will only publish demographic information on staff where there is no breach of data protection. This is in relation to where smaller data sets can be identifiable to an individual or small number of people.

18. **RELIGION AND BELIEF**

The protected characteristic of religion or belief includes any religion and any religious or philosophical belief. It also includes a lack of any such religion or belief. The CCG recognises that manifestations of a religion or belief may lead to treat certain days as days of worship, following dress codes and following certain diets or and fasting.

Where employees have particular cultural and religious needs, the CCG will consider whether it is reasonably practicable to vary and/or adapt work requirements to meet these needs.

19. **PREGNANCY AND MATERNITY**

Pregnancy and Maternity is a protected characteristic of the Equality Act 2010.

The CCG will uphold its Maternity Policy. This covers circumstances where employees request shared parental leave, request paternal leave or adopt a child.

In line with health and safety policies, the CCG will consider the risks in relation to the individual and take action to avoid them. This may mean taking extra breaks or refraining from lifting.
20. **PROCEDURE FOR DEALING WITH COMPLAINTS OF DISCRIMINATION**
Any employee who feels that they have been discriminated against on any grounds set out in this policy should initially raise their concerns with their line manager. Where an employee’s concerns relate to their line manager, the employee should raise their concern with a member of the Human Resources Team.

21. **GRIEVANCE**
Where resolution cannot be achieved through informal discussion, an employee may put forward a grievance in line with the guidelines set down in the CCG’s Grievance Procedure. Alternatively the CCG’s Harassment and Bullying at Work Policy may be followed. At all stages of the procedure, employees can be accompanied by a Trade Union representative or work colleague.

22. **SCHEME OF DELEGATION (if appropriate)**
Each policy will contain a scheme of delegation specific to the stages and actions associated to the policy. All Schemes will adopt the levels as outlined below therefore ensuring consistency throughout all policies and clarity within the organisation.

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<tr>
<th>Informal stages</th>
<th>Line Manager or equivalent level manager from elsewhere within the organisation</th>
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<tr>
<td>• Commissioning an Investigation</td>
<td>Line manager or equivalent level manager from elsewhere within the organisation or the line managers direct manager if the line manager has been previously involved or implicated</td>
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<tr>
<td>• Formal stage</td>
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<td>• Suspension</td>
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<tr>
<th>Appeal following formal stage</th>
<th>Line Managers manager or equivalent who has not previously been involved or implicated</th>
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<tbody>
<tr>
<td>Dismissal Hearings</td>
<td>Chaired by a Director plus one other manager and HR representative</td>
</tr>
<tr>
<td>Appeal against dismissal</td>
<td>Chaired by a Director plus one other manager and HR representative</td>
</tr>
<tr>
<td>Investigating Officer</td>
<td>The investigating officer shall be an impartial employee who has not been previously involved or implicated and has the appropriate skills to undertake the investigation. If deemed appropriate an external investigator may be appointed e.g. specialist knowledge, no suitable investigator available internally</td>
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23. **EQUALITY STATEMENT**
In applying this policy, the CCG will have due regard for the need to eliminate unlawful discrimination, promote equality of opportunity, and provide for good relations between people of diverse groups, in particular on the grounds of the following characteristics protected by the Equality Act (2010); age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, and sexual orientation, in addition to offending background, trade union membership, or any other personal characteristic.

An Equality Analysis has been carried out on this policy.

24. **MONITORING AND REVIEW**
The policy and procedure will be reviewed periodically by Human Resources in conjunction with operational managers and Trade Union representatives. Where review is necessary due to legislative change, this will happen immediately.