



## **YMCA GLENROTHES EQUAL OPPORTUNITIES**

### **Equal Opportunities**

This policy sets out how we will manage equality of opportunity within the YMCA Glenrothes .

We recognise that this will benefit all employees and job applicants. We are committed to the prevention of unlawful and unfair discrimination (both direct and indirect), harassment and victimisation. We will treat all employees and job applicants with dignity and respect, recognising the value of each individual and embracing the values of diversity.

The overall responsibility for the effective implementation of the policy rests with the Board of Trustees, however, the Director, team leaders and employees all have a responsibility for ensuring that equality is integrated, implemented and monitored within their own service area. All employees are responsible for the promotion and advancement of the equality of opportunity policy.

The policy covers the following areas:

- Why we have an equality of opportunity policy
- The main principles of our policy
- Support for employees who are affected by discrimination, harassment or victimisation
- Protected characteristics
- Ex- Offenders
- Trade Union membership
- Roles and responsibilities
- Third party harassment
- Monitoring

Each section summarises our main principles in this area.

### **Why we have an equality of opportunity policy**

This policy sets out how we will manage equality of opportunity within our organisation.

It aims to provide clear advice on how to promote equality of opportunity within our organisation and employee responsibility when using our key employment processes.

There are many benefits of promoting equality of opportunity and managing diversity, some of which are summarised below:

- Organisations that offer good working conditions and engage with their employees, benefit from more positive and committed employees who are less likely to leave.
- Employees who are happier at work are less likely to suffer from stress or become sick, leading to fewer disruptions in service delivery.

- Well regarded employers become "employers of choice" and will receive more applications for jobs, leading to a larger pool of talent to choose from.
- A diverse workforce will be more creative and innovative and will better meet the needs of diverse service users.

Our policy covers all YMCA Glenrothes employees, prospective employees and volunteers. We plan to review this policy every three years or earlier if we need to.

## **The Equality Act**

The Equality Act came into effect in October 2010 and it incorporates and hence replaces all existing equality law:

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Employment Equality (Religion or Belief) Regulations 2003
- Employment Equality (Sexual Orientation) Regulations 2003H
- Employment Equality (Age) Regulations 2006

Although the obligations under the Equality Act remain largely the same, the new legislation offers extended protection to a wide range of groups that face discrimination and strengthens particular aspects of equality law.

The Equality Act covers the following nine equality strands. These are now called '**protected characteristics**' and are summarised below.

- Age
- Disability
- Gender reassignment
- Marriage and civil partnership
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

## **What is discrimination?**

Unfair discrimination in employment occurs as a result of prejudice, misconception and stereotyping which hinders the proper consideration of an individual's talents and potential. Discrimination can take many forms; it can be direct, indirect, intentional or unintentional. Whether it was intentional or unintentional often does not matter. What matters is whether the

employer acted unlawfully or not. By law, employers must not discriminate against, harass or victimise people who work for them.

### **Who should use this policy, and when they should use it?**

This policy is for all our employees to refer to. Line Managers may find this of particular use when dealing with people management issues which might include:

- Advertising a vacancy
- Recruiting a new employee
- Transferring or promoting an existing employee
- Managing an employee's attendance
- Considering requests for annual leave, flexible working, or time off for medical appointments
- Considering training requests
- Making the necessary maternity arrangements for pregnant employees
- Considering disciplinary action against an employee
- Considering dismissing an employee

The policy follows the legal framework relating to aspects of equalities within the workplace and makes sure that the YMCA Glenrothes meets its statutory obligations. The policy also ensures that the spirit of partnership working between the YMCA Glenrothes and trade unions is maintained.

### **How to get help and advice if you are using this policy**

This policy covers the key principles of how we manage equality of opportunity in our organisation. For any specific queries you can contact "Employee Counselling Service for advice or contact a line manager.

We also offer "Diversity in The Workplace Awareness Training" to all employees on a regular basis. This can also be arranged where necessary.

### **The main principles of our policy**

We will ensure all our policies follow the guiding principles of the equality opportunity policy.

YMCA Glenrothes aims to create a working environment in which:

- All people are able to give of their best
- There is no harassment or discrimination
- All decisions are based on merit

This will be achieved by:

- Promoting equality of opportunity
- Promoting good relations.

- Promoting positive attitudes
- Eliminating harassment
- Eliminating unlawful discrimination

### **Support for employees who are affected by discrimination, harassment or victimisation**

If an employee wishes to make a complaint of harassment at work, discrimination or inequality in treatment on the basis of any of the protected characteristics or of victimisation then this should be dealt with through the Fair Treatment at Work Procedure.

YMCA Glenrothes will take any complaint seriously and will seek to resolve any issues or concerns raised.

For more information please refer to the publications listed below.

- Fair Treatment at Work Policy
- Grievance Policy and Procedure Fair Treatment at Work Procedure
- How to Maintain a Fair Workplace
- A Rough Guide to Harassment

### **Further sources of information and advice**

Employee Counselling Service 0800 389 7851 Website: [www.empcs.org.uk](http://www.empcs.org.uk)

Time for Talking: Helpline: 0800 970 3980 Website: [www.timefortalking.co.uk](http://www.timefortalking.co.uk)

### **Protected characteristics**

#### **Age**

The Equality Act protects people of all ages. However, different treatment because of age is not necessarily unlawful. Age is the only protected characteristic that allows employers to objectively justify direct discrimination in some very specific situations.

#### **Disability**

An employee is considered disabled if they have a physical or mental impairment which has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities. Disability also covers employees with progressive conditions such as HIV, multiple sclerosis and cancer. People with mental illness are protected in the same way as everyone else.

#### **Disability and reasonable adjustments**

The key provision in relation to disability discrimination remains the duty to make reasonable adjustments. There are now three specific requirements.

The first requirement means that you need to make reasonable adjustments for employees to help them overcome disadvantage resulting from impairment. Where a "provision, criterion or

practice" puts a disabled employee at a substantial disadvantage in comparison with someone who is not disabled, the requirement is to take such steps as it is reasonable to have to take to avoid the disadvantage.

The second requirement applies to a physical feature (for example, stairs, parking, emergency escapes, doors, toilets and washing facilities etc.) Where a physical feature puts a disabled employee at a substantial disadvantage compared to a non-disabled people, the requirement is to take such steps as it is reasonable to have to avoid the disadvantage. This may include removing or altering the physical feature.

The third requirement is to take reasonable steps to provide an auxiliary aid where the absence of such an aid would place a disabled employee at a substantial disadvantage when compared with employees who are not disabled (examples of aids include hearing induction loops, special computer hardware/ software etc.)

Further information is available in the Disability Guidance for Managers.

### **Disability and indirect discrimination**

It would be discriminatory to treat a disabled employee unfavourably due to something arising in consequence of the disability and this cannot be justified (e.g. a tendency to make spelling mistakes arising from dyslexia). This type of discrimination is unlawful, if the manager knows, or could reasonably be expected to know, that the employee has a disability

Indirect discrimination now covers disabled people which mean that a job applicant or employee could claim that a particular rule or requirement places a disadvantage to people with a disability.

### **Gender reassignment**

The Equality Act provides protection for transsexual people. A transsexual employee is someone who proposes to, starts or has completed a process to change his or her gender. The employee does not have to be undergoing any medical procedures to be protected. Transgender people such as cross dressers, who are not transsexual, are not protected by the Act. You must ensure any employees undergoing gender reassignment are not discriminated against in any way either directly or indirectly.

It would be discriminatory to treat transsexual people less favourably or differently for being absent from work because they propose to undergo, are undergoing or have undergone gender reassignment. Medical procedures for gender reassignment such as hormone treatment should not be treated as a "lifestyle" choice.

### **Marriage and civil partnership**

The Equality Act protects employees who are married or in a civil partnership against discrimination. You must not treat employees who are married or in a civil partnership worse than employees who are not married or not in a civil partnership. You must treat employees who are married and employees who are in a civil partnership the same.

## **Pregnancy and maternity**

A woman is protected against discrimination on the grounds of pregnancy and maternity during the period of her pregnancy and any statutory maternity leave to which she is entitled. Equality law refers to this as the "protected period". Men cannot claim sex discrimination in respect of the special treatment afforded to women in connection with pregnancy or childbirth. A woman must not be dismissed because she is pregnant or for any reason connected with her pregnancy or maternity leave.

All pregnant employees have the right not to be unreasonably refused the time off work they need for ante-natal care, and this time off must be paid. Employees are entitled to reasonable time off to travel to and from the appointment, wait for the appointment and attend the appointment or class.

You can of course, ask that an employee tries to arrange appointments in such a way as to minimise disruption at work if this is possible but you cannot refuse her the right to an appointment without good reason. A pregnant woman cannot be required to make up the time she has missed at some other time. Nor can she be made to take annual leave to cover the time off. It is unlawful to discriminate against a woman because she is breastfeeding.

## **Race**

The Equality Act's definition of "race" includes colour, nationality and ethnic or national origins; it can also include caste discrimination in specified circumstances. A racial group can be made up of two or more different racial groups (e.g. Black Britons.)

## **Religion or belief**

Managers and employees must always be respectful of the religion and beliefs of others. The Equality Act states that "religion" includes any religion. It also includes a lack of religion.

A number of factors apply when deciding what is a 'religion or belief' e.g. collective worship, a clear belief system or a profound belief affecting a way of life or view of the world. The definition is deliberately not precise in defining what does and does not count as a religion or similar belief.

A belief means any religious or philosophical belief (or a lack of such belief.) A belief in man-made climate change, and in a moral duty to live in a way that mitigates its effects, could constitute a philosophical belief but to be protected, a belief must satisfy various criteria. The belief must be:

- Genuinely held
- Not merely an opinion based on information currently available
- Related to a weighty and substantial aspect of human life and behaviour
- Persuasive, serious, cohesive and important; and
- Worthy of respect in a democratic society and not incompatible with human dignity or in conflict with the fundamental rights of others

Political beliefs are not protected under the Equality Act. Discrimination because of religion or belief can occur even where both the discriminator and recipient are of the same religion or belief.

## **Sex**

Both men and women are protected under the Equality Act.

## **Sexual orientation**

Sex discrimination is distinct from discrimination on the grounds of sexual orientation. The Equality Act protects bisexual employees, employees of the same sex (lesbians and gay men), heterosexual employees, where the discrimination is because of their sexual orientation. You must not make assumptions or employment decisions based on the sexual orientation of an employee or discriminate against them in any way.

## **Ex-offenders**

Under the Rehabilitation of Offenders Act 1974 ex-offenders are given the right not to be discriminated against when their convictions become 'spent'. Broadly speaking, anyone who has been convicted of a criminal offence and who is not convicted of a further offence during a specified period (the 'rehabilitation period') becomes a 'rehabilitated person'. This means that the conviction does not have to be declared for most purposes (such as applying for a job).

Employees are given protection against dismissal or exclusion from any office, profession, occupation or employment and employers cannot prejudice a person in any way because of a spent conviction. A conviction resulting in a prison sentence of more than 30 months can never become spent.

The Rehabilitation of Offenders Act (Exclusions and Exceptions) (Scotland) Order 2003 lists work where spent convictions can be asked about - broadly relating to work with children, the sick, disabled people and the administration of justice. Because of the Protection of Children (Scotland) Act 2003, YMCA Glenrothes must request an enhanced disclosure certificate for jobs relating to work with children and adults at risk. This process allows employers to see spent convictions and the information could be taken into account for recruitment decisions.

For work not listed in the exemptions order it is illegal to ask questions about, and make decisions on, spent convictions when recruiting ex-offenders. YMCA Glenrothes has a duty when recruiting to treat applicants fairly and recruiting managers must recognise that having a criminal record does not mean a lack of skills, qualifications and experience.

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## **Trade Union membership**

UK employment protection legislation provides a number of safeguards which are intended to protect individuals from suffering victimisation on the grounds of their trade union membership, non-membership or for participating in the activities of a trade union.

## **Roles and responsibilities**

As an employer, we are legally responsible for acts of discrimination, harassment and victimisation carried out by our employees in the course of their employment. We have an overall responsibility to comply with the legislation designed to protect people's rights.

Our key responsibilities are:

- To eliminate discrimination, harassment and victimisation in employment
- To advance equality of opportunity between all employees
- To foster good relations between all employees
- To remove or minimise disadvantages suffered by employees because of a protected characteristic
- To take steps to meet the needs of employees who share a relevant protected characteristic that are different from the needs of employees who do not share it
- To encourage employees who share a protected characteristic to participate in any employment activity where participation by such employees is disproportionately low

The Board of Trustees has overall responsibility for the operation and monitoring of the equality of opportunity policy. Service delivery issues are delegated to the Directors and senior managers. Each Service has the responsibility for the implementation of the employment aspect of the policy. Line Managers and employees also have important responsibilities.

## **Managers**

All line managers need to ensure their own behaviour and conduct models best practice and that they take steps to correct behaviour or actions which do not comply with the equality of opportunity policy.

## **Employees**

All employees that are responsible for developing plans, policies and proposals need to consider any positive or negative impacts on the promotion of equality. Where you are developing a new policy or strategy or in reviewing existing policy and practice there may be a need to undertake an Equality Impact Assessment (EqIA). People are not all the same and any policy should reflect the fact that different people have different needs.

For further information see Equality Impact Assessment Guidance

All employees have a role to play in promoting equality and taking responsibility for ensuring their own behaviour and action comply with and support the equality of opportunity policy.

Discriminating, colluding in discrimination or allowing discrimination to go unchallenged are all disciplinary offences and may in some cases be regarded as gross misconduct for which the sanction will be summary dismissal.

## **Third party harassment**

If another person is employed by YMCA Glenrothes or is carrying out instructions on our behalf to do something then they are referred to as "agents" of YMCA Glenrothes. If an agent does

something that amounts to unlawful discrimination, harassment or victimisation YMCA Glenrothes could be held legally responsible for their acts even if there is no formal contract with them.

It does not matter whether or not we knew about it or approved of what the employee or agent did. However, we will not be held legally responsible if we can show that:

- All reasonable steps to stop an agent acting unlawfully were taken
- An agent acted outside the scope of our authority
- By adding a requirement about behaving in line with equality law in the contract, and making it clear that breaches of equality law will be treated as a breach of contract

Employees should report any bullying or harassment by customers, suppliers, visitors or others to their manager so they can take appropriate action.

## **Monitoring**

YMCA Glenrothes recognises that regular monitoring of job applicants and employees is essential to the thorough review of the effectiveness of this policy.

- To highlight possible inequalities. This means we can investigate their underlying cause and remove any unfairness or disadvantage
- To comply with our obligations under the public sector equality duty
- To assist with the procurement process, having this data could (where equality issues are relevant) make the difference when contracts are being awarded

Examples of the information which is monitored:

- How many job applicants with a particular protected characteristic apply for each job, are short-listed and are recruited
- How many employees have a particular protected characteristic and the levels within the organisation that they are employed at
- The satisfaction levels of employees with a particular protected characteristic
- The number of complaints of discrimination, harassment or victimisation raised through the Fair Treatment at Work procedure

The information will be used to compare it with previous years' data and help YMCA Glenrothes address any perceived or identified equality issues.

The information provided by employees and job applicants will not be used to discriminate against them, harass them or victimise them. To reassure job applicants monitoring forms are separated from their application forms.

The information required is relevant to the aims of the policy and does not infringe the Data Protection Act 1998.

### **Definition of direct discrimination**

Direct discrimination occurs when someone is treated less favourably than another person because of a protected characteristic they have or are thought to have (perceptive discrimination) or because they associate with someone who has a protected characteristic (associative discrimination). There is no legal defence for direct discrimination, except if the characteristic is age. There are some very specific situations where managers may be able to justify treating employees of different ages differently because of their age (e.g. if there were as an occupational requirement.)

ACAS Example:

Paul, a senior manager, turns down Angela's application for promotion to a supervisor position. Angela, who is a lesbian, learns that Paul did this because he believes the team that she applied to manage are homophobic. Paul thought that Angela's sexual orientation would prevent her from gaining the team's respect and managing them effectively. This is direct sexual orientation discrimination against Angela.

### **Definition of associative discrimination**

This is a form of direct discrimination against someone because they associate with another person who possesses a protected characteristic which applies to race, religion or belief and sexual orientation, age, disability, gender reassignment and sex. For example, spouses, partners, parents and carers who look after a disabled person or older relative.

ACAS Example:

June works as a project manager and is looking forward to a promised promotion. However, after she tells her boss that her mother, who lives at home, has had a stroke, the promotion is withdrawn. This may be discrimination against June because of her Organisation with a disabled person.

### **Definition of perceptive discrimination**

This is direct discrimination against an individual because others think they possess a particular protected characteristic which applies to age, race, religion or belief and sexual orientation, disability, gender reassignment and sex. It applies even if the person does not actually possess that characteristic.

ACAS Example:

Jim is 45 but looks much younger. Many people assume that he is in his mid 20s. He is not allowed to represent his organisation at a conference because his manager thinks that he is too young. Jim has been discriminated against on the perception of a protected characteristic.

### **Definition of indirect discrimination**

Indirect discrimination can occur when there is a particular condition, rule, policy or practice that applies to everyone but particularly disadvantages people who share a protected characteristic which applies to age, race, religion or belief, sex, sexual orientation, marriage and civil partnership, disability and gender reassignment. Indirect discrimination can be justified if it were considered a „proportionate means of achieving a legitimate aim.“ Being proportionate

means being fair and reasonable, including showing that other less discriminatory alternatives were considered. Pregnancy and maternity are not covered; however, policies and procedures that would put pregnant women and new mothers at a disadvantage could constitute unlawful indirect sex discrimination.

ACAS Example:

A small finance Organisation needs its staff to work late on a Friday afternoon to analyse stock prices in the American finance market. The figures arrive late on Friday because of the global time differences. During the winter some staff would like to be released early on Friday afternoon in order to be home before sunset – a requirement of their religion. They propose to make the time up later during the remainder of the week. The Organisation is not able to agree to this request because the American figures are necessary to the business; they need to be worked on immediately and the Organisation is too small to have anyone else able to do the work. The requirement to work on Friday afternoon is not unlawful indirect discrimination as it meets a legitimate business aim and there is no alternative means to available.

### **Definition of "dual" or combined discrimination**

From April 2011, employees can claim that they have been discriminated against on the basis of a combination of two (but no more) of the following protected characteristics; age, disability, gender reassignment, race, religion or belief, sex and sexual orientation. For example, they are an Asian woman rather than just because of her race or her gender. This only applies to claims of direct discrimination and not indirect discrimination or harassment.

ACAS Example:

Lena is a black woman who answers telephones in a call centre. She is passed over for promotion to work on reception because her manager thinks that black women do not perform well in direct-facing customer service roles.

### **Definition of harassment**

Harassment is defined as the: “unwanted conduct related to a relevant protected characteristic, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.”

Harassment applies to all protected characteristics (excluding pregnancy and maternity, marriage and civil partnership) However, direct discrimination protection prohibits treatment such as bullying and harassment which results in a person being treated less favourably.

Under the new Equality Act employees will now be able to complain of behaviour that they find offensive even if it is not directed at them, and the complainant need not possess the relevant characteristic themselves. Even a one-off incident can amount to harassment. The victim need not have made the perpetrator aware that the conduct was unwanted.

Harassment at work is sometimes linked to bullying. Bullying behaviour may or may not amount to harassment in equality law. For behaviour to count as harassment in equality law, it has to be one of three types:

Type 1: Unwanted behaviour related to the protected characteristics (age, disability, race, sex, gender reassignment, religion or belief or sexual orientation.)

Type 2: Sexual harassment

Type 3: Less favourable treatment because of submission to, or rejection of, previous sex or gender reassignment harassment

ACAS Example:

Paul is disabled and is claiming harassment against his line manager after she frequently teased and humiliated him about his disability. Richard shares an office

with Paul and he too is claiming harassment, even though he is not disabled, as the manager's behaviour has also created an offensive environment for him.

### **Definition of harassment by a third party**

The Equality Act makes YMCA Glenrothes potentially liable for harassment of employees by fellow employees and non-employee third parties. Previously it only applied to sex but now also applies to harassment on the grounds of the following protected characteristics (age, disability, gender reassignment, race, religion or belief and sexual orientation.) We would be liable if the harassment had occurred on at least two previous occasions, management was made aware that it had taken place and they had not taken reasonable steps to prevent it from happening again. This is known as the three strikes rule. It does not matter whether or not it is the same third party who harasses the employee on each occasion.

ACAS Example:

Chris manages a Council Benefits Office. One of his staff, Frank, is gay. Frank mentions to Chris that he is feeling unhappy after a claimant made homophobic remarks in his hearing. Chris is concerned and monitors the situation. Within a few days the claimant, pointing out that this behaviour is unacceptable. He considers following it up with a letter to him pointing out that he will ban him if this happens again. Chris keeps Frank in the picture with the actions he is taking and believes he is taking reasonable steps to protect Frank from third party harassment.

### **Definition of victimisation**

Victimisation occurs when an employee is treated badly because they have made or supported a complaint or raised a grievance under the Equality Act; or because they are suspected of doing so. An employee is not protected from victimisation if they have maliciously made or supported an untrue complaint.

ACAS Example:

Anne makes a formal complaint against her manager because she feels that she has been discriminated against because of marriage. Although the complaint is resolved through the organisation's grievance procedures, Anne is subsequently ostracised by her colleagues, including her manager. She could claim victimisation