

Equality and Diversity

THE ROYAL COLLEGE OF SURGEONS OF ENGLAND

NOVEMBER 2004



The Royal
College
of
Surgeons
of
England

Equality and Diversity

Introduction

The Royal College of Surgeons of England has responsibilities under the domestic and European equality legislation to act without discrimination in all its practices and arrangements. The College operates as an employer, as a trainer, an authorising body and examiner for surgeons and provides other services for members and the general public. The legislation acts as a backcloth to the College's desire to encourage a wider diversity of people to work as surgeons and to become members of the College.

The College is committed to ensure equality of opportunity and to promote diversity for all existing and potential staff, affiliates, members, fellows, council members, contractors and visitors in accordance with the relevant statutory requirements. To do this the College seeks to:

- > operate practices that promote equal opportunities in employment, training and service delivery;
- > promote the development of a workplace environment free of harassment and discrimination;
- > ensure that all students, contractors and visitors are treated fairly, free of harassment and discrimination;
- > raise awareness of equality and diversity issues and promote best practice throughout the College; and
- > monitor its practices and arrangements in order to develop an inclusive equality and diversity strategy with action plans.

This document sets out the College's commitment to equal opportunities and the encouragement of diversity.

I. Equality and Diversity Policy Statement

1.1. The College is committed to the elimination of unfair discrimination on the grounds of gender, family status, age, race, ethnic origin, sexual orientation, religion, belief, disabled status, or any other unjustified condition, and to the promotion of equality and diversity for all existing and potential staff, affiliates, members, fellows, council members, contractors and visitors in its all its practices and arrangements.

1.2. The College is committed to equal pay for men and women employees doing equal work, work rated as equivalent or work of equal value under the terms of the *Equal Pay Act 1970* as amended.

1.3. The anti-discrimination legislation covers discrimination on the grounds of gender, married status, colour, race, nationality, citizenship, ethnic or national origins and disability. Legislation that protects people from discrimination on the grounds of sexual orientation, and religion or belief, will be enacted by the end of 2003. Legislation that protects people from discrimination on the ground of age will be enacted by the end of 2006. The College's equality and diversity policy provides protection from discrimination and seeks to promote diversity in areas that are wider than the statutory minimum.

1.4. The College undertakes to work with its recognised trade union and staff associations to develop comprehensive equality and diversity policies and procedures which benefit all staff, affiliates, members, fellows, council members, contractors and visitors.

2. Responsibilities

2.1. All people have rights under the anti-discrimination legislation. They also have responsibilities to act without discrimination to others. All staff, affiliates, members, fellows and council members are required to conform to the College's equality and diversity policies.

2.2. Responsibility for equality and diversity issues are allocated as follows:

- > overall responsibility rests with the president and vice-presidents of Council;
- > each representative of the College is responsible for equality and diversity issues in his or her area;
- > overall responsibility for staff of the College rests with the chief executive of the College on behalf of the Council;
- > responsibility for equality and diversity within departments rests with the head of each department;
- > College staff with responsibility for equality and diversity are responsible for the development and delivery of the equality and diversity policy and strategy and monitoring the College's professional practices and arrangements, in conjunction with the College HR department
- > the College's HR department is responsible for monitoring the College's practices and arrangements with regards to College staff.

2.3. The reporting structures for these individuals are as follows:

- > For all matters relating to affiliates, members, fellows and council members the Opportunities in Surgery project manager will report to the member of Council with responsibility for equality and diversity who reports to the Division and Council.
- > For all matters relating to College staff (including contractors) the staff member reports to his or her line manager. The line manager then reports to the head of the division who reports to the chief executive.

2.4. All staff, affiliates, members, fellows and council members should receive training appropriate to their role on the requirements of the anti-discrimination legislation, their responsibility to act without discrimination and their duty to promote equality and diversity.

3. Implementation

3.1. The College is committed to improving diversity within its employment and to encouraging a wider diversity of people to work as surgeons and to become members of the College.

3.2. The College is committed to using lawful positive action measures to improve the development of diversity in the College. Positive action may include targeted job advertisements, single-sex or single-ethnic group (or other defined group) training schemes for people from unemployed or under-represented groups, designed to enable people from those designated groups to compete for posts. Positive action does not permit the College to select people simply because they come from under-represented groups.

3.3. The College recognises that women have particular difficulties establishing a career in surgery and has supported the campaign Women in Surgical Training (WIST) since 1991. WIST aims to enable women who have chosen a career in surgery to realise their professional goals. WIST has representatives in every region.

3.4. *The Race Relations (Amendment) Act 2000* gives public authorities, including the College, a statutory duty to promote race equality. It requires the College to have due regard to the need to eliminate unlawful race discrimination and promote equality of opportunity and good relations between persons of different racial groups; to monitor its staff, applicants and leavers by reference to the racial groups to which they belong, and to monitor those in employment in respect of training, promotion, performance assessment. The College is also required to monitor its grievance and discipline procedures in respect of the racial groups of those involved, and must publish the results of its monitoring on an annual basis.

4. Monitoring and Review

4.1. Responsibility for monitoring the effectiveness of the equality and diversity policy is shared between the College's HR department and staff members with responsibility for equality and diversity (*see* Section 2. Responsibilities). Together they evaluate the results of the monitoring to ensure that the College's practices and arrangements do not discriminate unfairly and produce an annual report of the monitoring analysis.

4.2. Responsibility for reviewing the monitoring analysis on an annual basis and recommending the setting of diversity targets in appropriate circumstances is shared between the College's HR department and staff members with responsibility for equality and diversity (*see* Section 2. Responsibilities).

4.3. The Council will review the monitoring analyses of all elements of the College's equality and diversity policies on an annual basis and set appropriate diversity targets and action plans.

5. Harassment and Bullying Policy Statement

5.1. The College is committed to providing a workplace environment free of harassment and bullying. A harassment-free working environment makes good business sense. Harassment or bullying can have a debilitating effect on people's lives and can affect their ability to perform their job properly.

5.2. Harassment and bullying can be unlawful under the anti-discrimination legislation, the *Protection from Harassment Act* and the *Health and Safety at Work* legislation. Both the College and the perpetrator can be held legally liable for acts of harassment and bullying.

5.3. Harassment occurs in circumstances where someone's dignity has been violated or where they have been subjected to an intimidating, hostile, degrading, humiliating or offensive environment. Bullying is vindictive, cruel behaviour which humiliates and undermines confidence.

5.4. The College will take all complaints of harassment or bullying seriously and ensure that all complaints are investigated effectively.

6. Selection Policy Statement

6.1. Ensuring that all candidates have equality of opportunity in the selection process makes good business sense. It ensures that the best people are recruited from a diverse background and retained by the College.

6.2. The College monitors all stages of the recruitment and selection process to ensure that its commitment to equality and diversity is fulfilled.

6.3. The College is committed to improving diversity in its employment. Where the monitoring process shows that people from a designated group have been under-represented in a particular post over the preceding 12 months, it will consider using the positive action provisions of the anti-discrimination legislation to encourage people from the under-represented group to apply for employment opportunities.

6.4. All advertisements make it clear that applications are welcome from all sections of the community.

6.5. People of all ages have skills, abilities and experience that can be relevant to the job, and can bring a greater diversity to the workforce. All people are assessed without reference to their age.

6.6. The College recognises that working reduced or flexible hours can be of benefit to many people, but particularly people with domestic commitments.

6.7. The College will endeavour to make reasonable adjustments to working arrangements and/or physical features to accommodate a disabled employee or job applicant.

7. Grievance Policy Statement

7.1. Under the terms of the anti-discrimination legislation, the College is liable for any discriminatory act done with or without its approval or knowledge unless it took such steps as were reasonably practical to prevent the unlawful act(s). The perpetrator of any discriminatory act can be held liable for their actions in an employment tribunal. Equal opportunities is not an option, it is a legal requirement which places a liability upon individual staff members, affiliates, members, fellows and council members and upon the College as an employer, as an examiner and as a provider of services.

7.2. Any derogation from the College's equality and diversity policies, except in circumstances where there are legal limitations on employment in certain posts, will result in disciplinary action. Such disciplinary action could include dismissal.

7.3. Victimisation of a person who invokes the grievance procedure or who provides any form of assistance to someone who is or has invoked the grievance procedure is unacceptable and may constitute unlawful conduct under the antidiscrimination legislation.

7.4. All cases will be dealt with in the strictest confidence. Anyone wishing to make a complaint under the College's equality and diversity policy should use the procedures detailed in Section 8.

8. Grievance Procedure

8.1. Employees who consider that they have a complaint about the way they have been treated under the equality and diversity policy or harassment and bullying policy should use the grievance procedure set out in the staff handbook in order to have their complaint resolved.

8.2. All contracted staff or visitors who consider that a member of staff of the College or an affiliate, member, fellow or council member has discriminated against them should write to the chief executive with full details of their complaint. The chief executive will appoint a member of the senior management team to investigate the complaint and make recommendations as to future action. The investigation will be completed within 14 days. They can appeal the decision to the chief executive within seven days. The chief executive will give a final decision within seven days.

8.3. Affiliates, members, fellows or council members who consider that a member of staff of the College or another affiliate, member, fellow or council member has discriminated against them should write to the College president or one of the vice-presidents with full details of their complaint. After consultation with the chief executive or deputy chief executive, the president or vice-president will appoint a member of the senior management team to investigate the complaint and make recommendations as to future action. The investigation will be completed within 14 days. They can appeal the decision to the president or vice-president within seven days. The president or vice-president will give a final decision within seven days.

8.4. In circumstances where a member or fellow allegedly discriminates against another affiliate, member, fellow or council member in his or her place of work (ie when acting in his or her capacity as a surgeon), or when a member or fellow is acting in his or her capacity as a College assessor, (eg when acting as a member of an Advisory Appointment Committee), the complainant should contact the relevant Trust in the first instance. The Trust may wish to inform the College in due course, after the complaint has been dealt with by the Trust in its capacity as the surgeon's employer.

8.5. Anyone who is dissatisfied with the outcome of his or her grievance and who considers that the treatment by the College was unlawful discrimination in the context of employment or the delivery of vocational training may take his or her complaint to an employment tribunal. There is a statutory time limit of three calendar months less one day from the date of the last act that is the subject of complaint for registering a case with an employment tribunal. The statutory time limit is six months in the case of an alleged act of discrimination under the *Equal Pay Act 1970*. From April 2004 the provisions of the *Employment Act 2002* will mean that anyone lodging a complaint at an employment tribunal must raise his or her complaint through the College's grievance procedure at least 28 days before registering the complaint at an Employment Tribunal.

8.6. Any unresolved complaint alleging unlawful discrimination in the delivery of any service by the College must be taken to a county court. There is a time limit of six months from the date of the alleged act of discrimination for lodging their complaint.

9. Glossary of Legal Terms

9.1. Unlawful **direct discrimination** consists of treating a person less favourably than others are, or would be treated in similar circumstances, on the grounds of their racial or ethnic group, gender, married or disabled status. Direct discrimination cannot be justified (except on the grounds of disability). For example less favourable treatment on the grounds of pregnancy would constitute unlawful direct sex discrimination (since only women can become pregnant).

9.2. Unlawful **indirect discrimination** occurs when an organisation applies a provision, criterion or practice which adversely affects a considerably larger proportion of one designated group than another and which the organisation cannot justify on job related grounds. For example:

- > A practice that prevents people in a department from working a fixed shift pattern could constitute unlawful indirect sex discrimination if it could be shown to adversely affect more women than men, and be unjustifiable on job-related grounds.
- > A restriction that requires job applicants to live in a particular town, or a particular part of a town, could constitute unlawful indirect race discrimination if it could not be justified on job related grounds.
- > If acceptance on a residential training course was limited to single people, it could constitute unlawful indirect discrimination against married people if it could not be shown to be justifiable.

9.3. In order to **justify** indirect discrimination, an organisation must strike a balance between the the discriminatory effects of the the imposition of a provision, criterion or practice and the reasonable need of the organisation. This means that the organisation must make a proportional analysis of the impact of any indirect discrimination and the job related need for the requirement.

9.4. It is also unlawful to **victimise** someone for raising a complaint of discrimination in good faith, or for helping or advising someone to raise a complaint in good faith. For example, refusing to allocate overtime to someone who has raised a complaint of discrimination would be unlawful.

9.5. Protection from **disability discrimination** under the *Disability Discrimination Act 1995* applies to any child or adult with a physical or mental impairment that affects their ability to carry out normal day to day activities that are substantial, adverse and long term (over 12 months).

9.6. In addition to preventing discrimination against disabled people, the *Disability Discrimination Act 1995* requires an employer to make **reasonable adjustments** where working arrangements or physical features place a disabled employee or job applicant at a substantial disadvantage to persons who are not disabled.

9.7. Reserving or allocating a job to a person of either sex or race is unlawful, unless there is a reason why a person of that particular sex or race must do that job. The only circumstances where the College is able to select someone because of their sex are set out under the **genuine occupational qualification** provisions of the *Sex Discrimination and Race Relations Acts*. They apply only when the College has no other employee who could carry out the particular duties without undue inconvenience. These reasons include:

- > Preserving privacy or decency where there is intimate physical contact or someone is in a state of undress or using sanitary facilities.
- > Where the nature or location of the establishment means that it is not possible to have private sleeping or sanitary facilities for each sex.
- > Where the establishment provides special care, supervision or attention to people of one sex.
- > Providing personal services promoting welfare or education.

9.8. The *Sex Discrimination Act, Gender Reassignment Regulations 1999* provides legal protection in employment for people who have decided to undergo, are undergoing or who have undergone **gender reassignment**.

9.9. In respect of persons undergoing gender reassignment, a genuine occupational qualification can be claimed to exclude them from employment, in order to:

- > preserve privacy and decency when sharing accommodation; and
- > provide personal services promoting welfare to vulnerable individuals.

And, in respect of persons having undergone gender reassignment:

- > in order to conduct intimate searches pursuant to statutory powers (eg searches conducted by police officers); and
- > work in a private home.

9.10. **Harassment** that is based on a person's sex, race or disabled status can constitute unlawful direct discrimination under the *Sex Discrimination Act 1975*, the *Race Relations Act 1976* or the *Disability Discrimination Act 1995*. Enabling legislation is planned for 2003 to make harassment unlawful on the grounds of sexual orientation, religion and belief.

9.11. Harassment occurs in circumstances where someone's dignity has been violated or where they have been subjected to an intimidating, hostile, degrading, humiliating or offensive environment.

9.12. Further, **sexual harassment** is defined by the European Commission as unwanted conduct of a sexual nature, or other conduct based on sex which affects the dignity of men and women at work. It can include unwelcome physical, verbal or non-verbal conduct.

9.13. **Racial harassment** is defined by the Commission for Racial Equality as violence that may be verbal or physical and includes attacks on property as well as on the person, suffered by individuals or groups because of their colour, race, nationality and ethnic or national origins, when the victim believes that the perpetrator was acting on racial grounds and/or there is evidence of racism.

9.14. Harassment can be a continuing course of treatment, or just one incident.

Behaviour that could constitute harassment includes:

- > physical or verbal abuse that makes the recipient feel uncomfortable, degraded or intimidated; and
- > Display of posters or other pornographic or racist material, including any on computer screens.

9.15. **Bullying** is vindictive, cruel behaviour that humiliates and undermines confidence or is intended to undermine confidence. It is an abuse of power against a person or persons. It can occur from a subordinate, or group of subordinates to a supervisor

and between colleagues. The consequences of bullying could be unlawful under the anti-discrimination legislation and/or the *Health and Safety at Work Act*.

9.16. Behaviour that could constitute bullying includes:

- > imposing impossible objectives and deadlines;
and
- > criticising or humiliating individuals in public.

The effects of harassment or bullying on the individual can be physical, eg disturbed sleep, loss of energy, feeling sick or emotional, eg anxiety, loss of confidence, reduced self-esteem and depression.

9.17. Positive action is permitted by the anti-discrimination legislation in order to encourage (but not select) job applicants from people who belong to groups that are under-represented in particular jobs in comparison with their representation in the local community. Positive action can be undertaken in circumstances where:

- > there have been few or no persons of the under represented group;
- > in a particular post; and
- > for the preceding 12 months.

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