

# Tackling Discrimination Together

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ED5

**If you require a copy of this policy in an alternative format (for example large print, easy read) please contact the Accessible Information Team at [dis.torbay@nhs.net](mailto:dis.torbay@nhs.net) or 0300 456 8373 for advice.**

**If you would like any assistance in relation to the content of this policy please contact the Diversity & Inclusion Lead on 07976 895349**

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## 1 Purpose

- 1.1 The aim of this policy is to help achieve the Trusts commitment to preventing discrimination, valuing diversity and achieving equality of opportunity. Torbay and South Devon NHS Foundation Trust (T&SDNHSFT) is committed to promoting a culture that actively values difference and recognises that people from different backgrounds and experiences can bring valuable insights to the workplace and enhance the way we work. The Trust aims to be an inclusive organisation, where diversity is valued, respected and built upon, with ability to recruit and retain a diverse workforce that reflects the communities it serves.
- 1.2 This policy aims to proactively tackle discrimination or disadvantage and aims to ensure that no individual or group is excluded, discriminated against or left behind.

## 2 Introduction

- 2.1 Promoting fairness and equality is the foundation of the Equality Act (2010) and it applies to everyone. Every individual has the right to work in an environment that does not discriminate against them. The Trusts Diversity & Inclusion Policy (ED1) sets out our commitment to advance equality and value diversity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics governed by the Equality Act (2010) (for definitions, Diversity & Inclusion Policy (ED1)):

- Sexual Orientation
- Gender
- Age
- Gender Reassignment
- Pregnancy and Maternity
- Disability
- (Non) Religion or Belief
- Race
- Marriage and Civil Partnership

In addition to these, the Trust will not discriminate on the grounds of 'Inclusion Health' factors – typically any person who may be subject to social exclusion or stigmatisation. For instance, those with convictions, those who misuse substances, those who are homeless.

- 2.2 Discrimination can exist in a myriad of forms, of which the most common are:

- **Direct Discrimination** - treating someone with a protected characteristic less favourably than others
- **Indirect Discrimination** - putting rules or arrangements in place that apply to everyone, but that put someone with a protected characteristic at an unfair disadvantage

### 3 Roles and Responsibilities

- 3.1 **The Trust** has a responsibility to ensure that every member of staff (students, workers, and all volunteers and persons working under the terms of an honorary contract) have the right to live and work in an environment where everybody is treated with dignity and respect. This means the Trust will ensure that all workers are treated fairly and that we take discrimination seriously.
- 3.2 We will not tolerate any behaviour that discriminates against workers by service users, carers, relatives, the public, colleagues or anyone else.
- 3.3 This also means that we expect **our workers** to treat service users, carers, relatives, the public, colleagues or anyone else fairly and with respect.
- 3.4 **Our managers** have a duty of care to all workers and take a lead on addressing such situations. Managers should keep the worker informed and help with signposting and support. For example, occupational health, counselling, coaching and chaplaincy services (for all faiths and those with none).

### 4 Our position – tackling discrimination

- 4.1 T&SDNHSFT will not tolerate any behaviour that discriminates against workers by service users, carers, relatives, the public, colleagues or anyone else. Similarly, discrimination will not be tolerated against service users, carers, relatives, the public, colleagues or anyone else by our workers.

#### 4.2 Procedure if discrimination occurs:

- 4.2.1 If the worker feels able, they should challenge the inappropriate attitude/behaviour. The individual must be told that it is unacceptable to question or refuse to accept the services of a worker based on a (perceived) characteristic protected by the Equality Act (2010). If this situation arises the flowchart in Appendix A outlines a procedure for tackling discrimination.
- 4.2.2 The individual may accept the challenge to their behaviour to the point where the worker feels able to carry on and deliver services. This route should only be taken if the worker feels they are not putting themselves at risk. If this route is taken, we ask the worker to log an incident through Datix and report this to their line manager.
- 4.2.3 If the individual does not change the language or behaviour we ask the worker to report this to their line manager for a decision to be made regarding future actions. There must then be a discussion between the worker and line manager to agree a course of action. This must be done immediately or as soon as is feasibly possible. Part of this process must be to assess the risk of any interventions to both the individual and the worker. If this route is taken, an incident must still be logged on Datix and the individual written to – a sample letter is available in Appendix B for reference.

The following are the suggested possible outcomes:

Risk to worker	Risk to individual	Outcome
No risk	No risk	Consider withdrawing services
Risk	No risk	Consider withdrawing services
Risk	Risk	Conduct Risk Assessment
No risk	Risk	Conduct Risk Assessment

### 4.3 Risk Assessment

A Risk Assessment should be arranged if a risk is identified and should include the worker, the line manager and the individual who is refusing services including their representative if requested. This could be a carer, relative or independent advocate.

## 5 Reporting duties

5.1 Any incidents of discrimination (from staff, managers or the public) must be reported as an incident on Datix.

5.2 Any incidents of discrimination should be reported to the police as Hate Crime. Hate crime generally refers to criminal acts that are seen to have been motivated by bias against a person's protected characteristic. See information on reporting Hate Crime in Appendix A.

5.3 There are five monitored strands of hate crime:

- **Disability** - anyone who is targeted as a result of their disability (physical, sensory, learning, mental health, or long-term condition)
- **Gender-identity** - anyone who is transgender
- **Race** - any racial group or ethnic origin, including Traveller groups
- **Religion or belief (non)** - any religious group, including those who have no faith
- **Sexual orientation** - any person who is gay, lesbian or bisexual.
- 

### 5.2 Exceptions

5.4.1 There may be rare circumstances where we apply an exception. These might include:

- i) Where the individual requires reasonable adjustments as a result of a disability
- ii) Where the individual needs personal care and requests a carer of the same sex
- iii) Where the individual has specific requests due to a religious affiliation
- iv) Where the individual is transgender and should be treated as their acquired gender. As such, there may be additional sensitive and personal needs

In these cases we will try and fulfil their request. This is something we are permitted to do under the Equality Act (2010).

5.2.2 Additionally, we have a legal duty to meet the assessed social care needs of children and vulnerable adults. As highlighted in section 4.3 above a Risk Assessment should be arranged if a risk is identified, and legal advice sought if needed.

4.4.3 Where an individual has a condition, such as dementia or lacks mental capacity, we would need to consider the individual's capacity to deliberately act in a discriminatory manner, that is whether they realise they are being discriminatory or not. In these cases the worker and manager must discuss whether a Risk Assessment is needed or not.

## **6. Discrimination from colleagues**

- 6.1 The Trust will not tolerate any behaviour that discriminates against staff by other staff or those engaged in services through the Trust. Where unacceptable behaviour is observed, it must be reported immediately to a manager. Where this is not possible, the Trust's Freedom to Speak Up Guardians and Anti Bullying Advisors are available for additional support. An incident should also be recorded on Datix.

## **7. Training and Supervision**

- 7.1 All staff are required to undertake Equality and Diversity Mandatory Training every three years. As such, staff have a responsibility to ensure that they are aware of any policies relevant to their role. Managers have a responsibility to ensure staff have regular supervision and appropriate support is made available when required.

## **8. Monitoring and Auditing**

- 8.1 Any reported incidents will be monitored and audited on a regular basis. A full review will take place every two years by the Directorate of Nursing and Professional Practice unless legislative changes determine otherwise.
- 8.2 The purpose of monitoring is to enable the Trust to assess how effectively this policy is being implemented.

## **9. Staff Awareness**

- 9.1 This Policy will be promoted to staff through effective publication on Trust websites. Furthermore, updates will be included in an All Staff Bulletin to ensure that content is readily available and staff understand their responsibilities.

## **10. References**

Challenge, Educate, Support (2014): Norfolk and Suffolk NHS Foundation Trust  
Guidance for Staff and Managers (2015): Borough of Poole

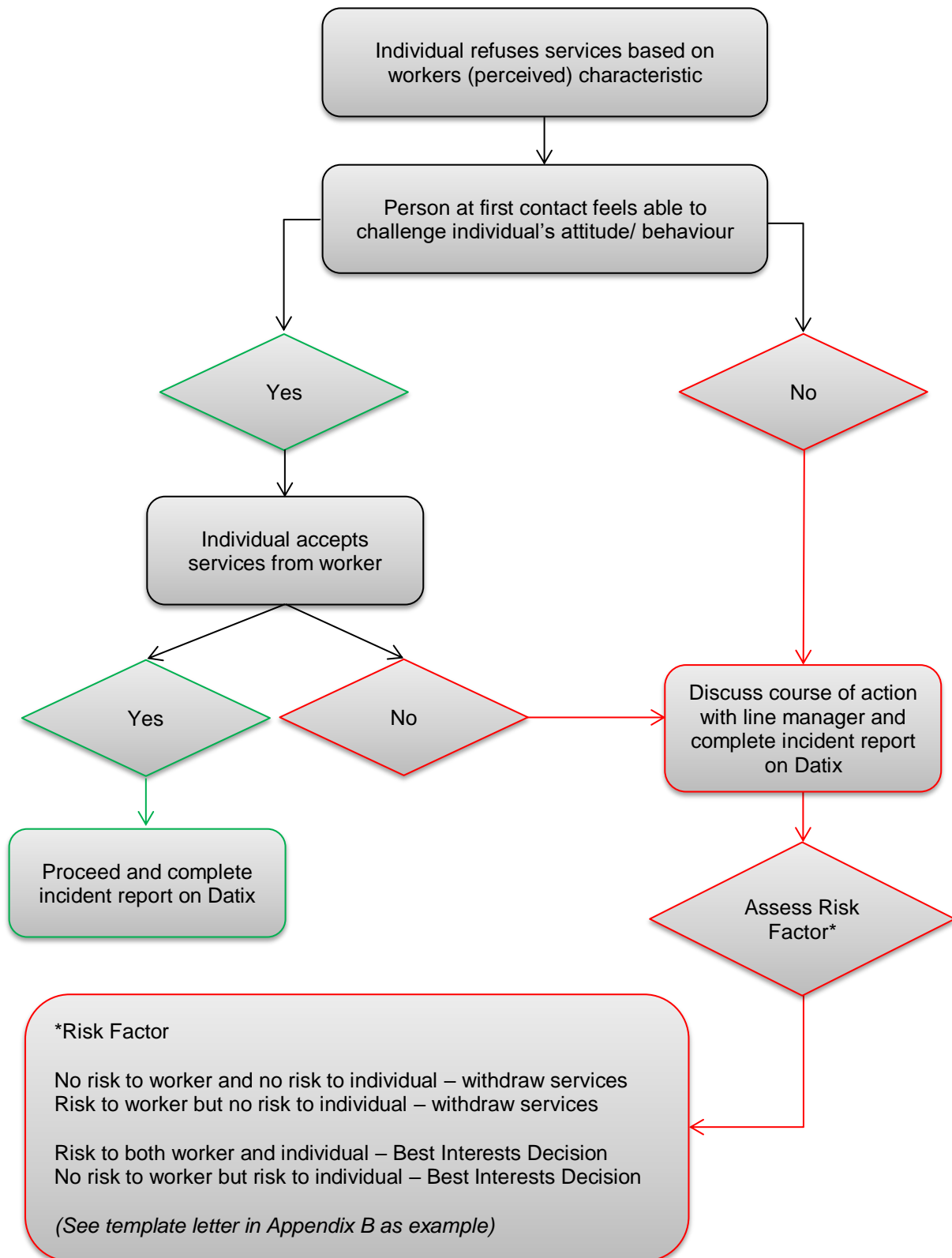
## **11. Equality and Diversity**

- 11.1 The Trusts are committed to preventing discrimination, valuing diversity and achieving equality of opportunity. No person (staff, patient or public) will receive less favourable treatment on the grounds of the nine protected characteristics (see Appendix 1 for definitions) as governed by the Equality Act 2010: Sexual Orientation; Gender; Age; Gender Reassignment; Pregnancy and Maternity; Disability; Religion or Belief; Race; Marriage and Civil Partnership. In addition to these nine, the Trusts will not discriminate on the grounds of domestic circumstances, social-economic status, political affiliation or trade union membership.

## 12. Further Information

Diversity & Inclusion Policy(ED1)  
Bullying & Harassment Policy (H4)  
Access Policy  
Violence and Aggression Policy

### 13. Appendix A – Procedure for tackling discrimination



**NB:** Assessment of Risk Factors must include consideration to report to Police as Hate Crime.  
<http://www.safercommunitiestorbay.org.uk/index/hatecrime.htm>

**STOP HATE CRIME**  
**0800 138 1625**  
 24 HOUR HELP LINE.



14. Appendix B – Template Letter

Date: 07 April 2022

**PRIVATE & CONFIDENTIAL**

Name  
Address Line 1  
Address Line 2  
Town  
Postcode

Full address  
Full address  
Torbay Hospital  
Lowes Bridge  
Torquay  
TQ2 7AA

Email: XXXXXXXX@nhs.net  
Phone: 01803 65XXXX

Dear XXXXX,

**Re: XXXXXXXXXXXXXXX**

Following your **visit** to the hospital on **DATE**, it has been brought to our attention that you made a request which indicated your wishes to receive treatment from a health professional of **XXXXXXXXXXXX** background only.

In light of this request, we would like to bring to your attention the Trust's position in relation to equality. Torbay and South Devon NHS Foundation Trust is committed to valuing diversity and supports a zero tolerance policy with regard to discrimination. It is through the active and effective understanding of the Equality Act 2010 that the NHS is able to recruit and retain a workforce that is more reflective of, and sensitive to, the population it seeks to serve.

We are therefore not willing to allocate your care to a healthcare professional of **XXXXXXXXXXXX** background only. Should our response not be satisfactory to you, you may wish to revisit your GP for a new referral to find an alternative provider for your treatment.

If you have any questions with regard to the content of this letter, please do not hesitate to contact us on the details listed above. Alternatively, information about the Patient Advice and Liaison Service (PALS) has been enclosed for your reference.

Yours sincerely,

**XXXXXXXXXXXXXXXXXXXX**  
**XXXXXXXXXXXXXXXXXXXXXXXXXXXX**  
Enc.

## 15. Document Control Information

*This is a controlled document and should not be altered in any way without the express permission of the author or their representative.*

*Please note this document is only valid from the date approved below, and checks should be made that it is the most up to date version available.*

*If printed, this document is only valid for the day of printing.*

<b>Ref No:</b>	ED5		
<b>Document title:</b>	Tackling Discrimination Together		
<b>Purpose of document:</b>	Guidance for staff on how to respond to discrimination		
<b>Date of issue:</b>	September 16	<b>Next review date:</b>	November 2022
<b>Version:</b>	1.4	<b>Last review date:</b>	November 2020
<b>Author:</b>	Diversity & Inclusion Lead		
<b>Directorate:</b>	Nursing and Professional Practice		
<b>Equality Impact:</b>	The guidance contained in this document is intended to be inclusive for all patients within the clinical group specified, regardless of age, disability, gender, gender identity, sexual orientation, race and ethnicity & religion or belief		
<b>Committee(s) approving the document:</b>	JCNC 14/7/16 QIG 9/8/16		
<b>Date approved:</b>	JCNC 14/7/16 QIG 9/8/16		
<b>Links or overlaps with other policies:</b>	All TSDFT Trust Strategies, policies and procedure documents		

	<i>Please select</i>	
	Yes	No
<b>Have you considered using Equality Impact Assessment?</b>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Does this document have implications regarding the Care Act?</b> <i>If yes please state:</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Does this document have training implications?</b> <i>If yes please state: will need a communications plan to inform staff</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<b>Does this document have financial implications?</b> <i>If yes please state:</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<b>Is this document a direct replacement for another?</b> <i>If yes please state which documents are being replaced:</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

### Document Amendment History

Date	Version no.	Amendment summary	Ratified by:
September 2016	1.0	Document published	JCNC 14/7/16 QIG 9/8/16
January 2019	1.3	General Review/audit	Diversity & Inclusion Officer
November 2020	1.4	General Review	Diversity & Inclusion Officer

## 15. The Mental Capacity Act 2005

The Mental Capacity Act provides a statutory framework for people who lack capacity to make decisions for themselves, or who have capacity and want to make preparations for a time when they lack capacity in the future. It sets out who can take decisions, in which situations, and how they should go about this. It covers a wide range of decision making from health and welfare decisions to finance and property decisions.

Enshrined in the Mental Capacity Act is the principle that people must be assumed to have capacity unless it is established that they do not. This is an important aspect of law that all health and social care practitioners must implement when proposing to undertake any act in connection with care and treatment that requires consent. In circumstances where there is an element of doubt about a person's ability to make a decision due to 'an impairment of or disturbance in the functioning of the mind or brain' the practitioner must implement the Mental Capacity Act.

The legal framework provided by the Mental Capacity Act 2005 is supported by a Code of Practice, which provides guidance and information about how the Act works in practice. The Code of Practice has statutory force which means that health and social care practitioners have a legal duty to have regard to it when working with or caring for adults who may lack capacity to make decisions for themselves.

**“The Act is intended to assist and support people who may lack capacity and to discourage anyone who is involved in caring for someone who lacks capacity from being overly restrictive or controlling. It aims to balance an individual's right to make decisions for themselves with their right to be protected from harm if they lack the capacity to make decisions to protect themselves”. (3)**

All Trust workers can access the Code of Practice, Mental Capacity Act 2005 Policy, Mental Capacity Act 2005 Practice Guidance, information booklets and all assessment, checklists and Independent Mental Capacity Advocate referral forms on iCare

[http://icare/Operations/mental\\_capacity\\_act/Pages/default.aspx](http://icare/Operations/mental_capacity_act/Pages/default.aspx)

## 16. Quality Impact Assessment (QIA)

Who may be affected by this document?	<i>Please select</i>			
	Patient / Service Users	<input checked="" type="checkbox"/>	Visitors / Relatives	<input checked="" type="checkbox"/>
	General Public	<input checked="" type="checkbox"/>	Voluntary / Community Groups	<input checked="" type="checkbox"/>
	Trade Unions	<input type="checkbox"/>	GPs	<input checked="" type="checkbox"/>
	NHS Organisations	<input checked="" type="checkbox"/>	Police	<input checked="" type="checkbox"/>
	Councils	<input type="checkbox"/>	Carers	<input checked="" type="checkbox"/>
	Staff	<input checked="" type="checkbox"/>	Other Statutory Agencies	<input type="checkbox"/>
	Others ( <i>please state</i> ):			

Does this document require a service redesign, or substantial amendments to an existing process?	<input type="checkbox"/>
<i>If you answer yes to this question, please complete a full Quality Impact Assessment.</i>	

Are there concerns that the document could adversely impact on people and aspects of the Trust under one of the nine strands of diversity?	Age	<input type="checkbox"/>	Disability	<input type="checkbox"/>
	Gender re-assignment	<input type="checkbox"/>	Marriage and Civil Partnership	<input type="checkbox"/>
	Pregnancy and maternity	<input type="checkbox"/>	Race, including nationality and ethnicity	<input type="checkbox"/>
	Religion or Belief	<input type="checkbox"/>	Sex	<input type="checkbox"/>
	Sexual orientation	<input type="checkbox"/>	See below	
<i>If you answer yes to any of these strands, please complete a full Quality Impact Assessment.</i>				
<b>If applicable, what action has been taken to mitigate any concerns?</b>				

Who have you consulted with in the creation of this document?  <i>Note - It may not be sufficient to just speak to other health &amp; social care professionals.</i>	Patients / Service Users	<input type="checkbox"/>	Visitors / Relatives	<input type="checkbox"/>
	General Public	<input type="checkbox"/>	Voluntary / Community Groups	<input type="checkbox"/>
	Trade Unions	<input type="checkbox"/>	GPs	<input type="checkbox"/>
	NHS Organisations	<input type="checkbox"/>	Police	<input type="checkbox"/>
	Councils	<input type="checkbox"/>	Carers	<input type="checkbox"/>
	Staff	<input type="checkbox"/>	Other Statutory Agencies	<input type="checkbox"/>
	Details ( <i>please state</i> ):			

### 17. Rapid Equality Impact Assessment (for use when writing policies and procedures)

<b>Policy Title</b> (and number)		Tackling Discrimination			
<b>Policy Author</b>		Equality and Diversity Lead			
<b>Version and Date</b> (of EIA)		1.0 April 2016			
<b>Associated documents</b> (if applicable)		Equality and Diversity Policy. Access Policy.			
<b>RELEVANCE:</b> Does the aim/purpose of the policy relate to each of the aims of the Public Sector Equality Duty?					
• Eliminate unlawful discrimination or other conduct prohibited by the Equality Act 2010					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Advance equality of opportunity between people from different groups					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
• Foster good relations between people from different groups					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>SIGNIFICANCE AND IMPACT:</b> Consider the nature and extent of the impact, not the number of people affected.					
Does the policy affect service users, employees or the wider community? (if no, proceed to sign off)					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Does the policy affect service delivery or business processes?					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
Does the policy relate to an area with known inequalities (deprivation/unemployed/homeless)?					Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>
<b>EQUALITY ANALYSIS:</b> How well do people from protected groups fare in relation to the general population? <i>PLEASE NOTE: Any 'Yes' answers may trigger a full EIA and must be referred to the equality leads below</i>					
<b>Is it likely that the policy/procedure could treat people from protected groups less favorably than the general population? (see below)</b>					
Age	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Disability	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Sexual Orientation	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Race	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Gender	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Religion/Belief (non)	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
Gender Reassignment	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Pregnancy/ Maternity	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	Marriage/ Civil Partnership	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Is it likely that the policy/procedure could affect particular 'Inclusion Health' groups less favorably than the general population?</b> (substance misuse; teenage mums; carers; travellers; homeless; convictions; social isolation; refugees)					Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>
<b>Please provide details for each protected group where you have indicated 'Yes'.</b>					
NA					
<b>What if any, is the potential for interference with individual human rights?</b> (consider the FRED A principles of Fairness/ Respect/ Equality/ Dignity/ Autonomy)					
NA					
<b>RESEARCH AND CONSULTATION</b>					
<b>What is the reason for writing this policy?</b> (What evidence/ legislation is there?)					
Increased number of reports from staff experiencing discrimination in the workplace.					
<b>Who was consulted when drafting this policy/procedure? What were the recommendations/suggestions?</b>					
Draft policy will be taken to Employee Network Groups for review (BME/ LGBT/ DAAG)					
<b>ACTION PLAN:</b> Please list all actions identified to address any impacts					
<b>Action</b>				<b>Person responsible</b>	<b>Completion date</b>
<b>AUTHORISATION</b>					
<b>Name of person completing the form</b>	Emma McCluskey			<b>Signature</b>	
<b>Validated by (line manager)</b>	Cathy Bessent			<b>Signature</b>	

**Please contact the Equalities team for guidance:**

For South Devon & Torbay CCG, please call 01803 652476 or email [marisa.cockfield@nhs.net](mailto:marisa.cockfield@nhs.net)  
For Torbay and South Devon NHS Trusts, please call 01803 656676 or email [pdf.sdhct@nhs.net](mailto:pdf.sdhct@nhs.net)

**This form should be published with the policy and a signed copy sent to your relevant organisation.**