



Equal Opportunities and Dignity at Work Policy

Our Commitment

The Charity is committed to providing equal opportunities in employment and to avoiding unlawful discrimination in employment and against customers.

The Law

It is unlawful to discriminate directly or indirectly in recruitment or employment because of age, disability, sex, gender reassignment, pregnancy, maternity, race (which includes colour, nationality and ethnic or national origins), sexual orientation, religion or belief, or because someone is married or in a civil partnership. These are known as "protected characteristics".

Discrimination after employment may also be unlawful, eg refusing to give a reference for a reason related to one of the protected characteristics.

It is unlawful for an employer to fail to make reasonable adjustments to its requirements, working practices or the physical features of the workplace where these put a disabled job applicant or employee at a substantial disadvantage. It is also unlawful discrimination where a disabled employee is at a substantial disadvantage due to the employer's unreasonable failure to provide an auxiliary aid or service to the disabled employee.

It is generally unlawful to discriminate directly or indirectly, harass or victimise a member of the public based on any of the protected characteristics in the provision of services, goods or facilities. It is unlawful to fail to make reasonable adjustments to overcome barriers to using services caused by disability. The duty to make reasonable adjustments includes the removal, adaptation or alteration of physical features, if the physical features make it impossible or unreasonably difficult for disabled people to make use of services. In addition, service providers have an obligation to think ahead and make reasonable adjustments to address any barriers that may impede disabled people from accessing a service.

Dignity at work

Childhood First is committed to creating a work environment free of harassment and bullying, where everyone is treated with dignity and respect.

Some harassment is unlawful discrimination and serious harassment may be a criminal offence.

Bullying is offensive, intimidating, malicious or insulting behaviour, and/or an abuse or misuse of power that is meant to undermine, humiliate or injure the person on the receiving end. Examples of bullying would include picking on someone or setting them up to fail or making threats or comments about someone's job security without

good reason.

Harassment is unwanted conduct related to relevant protected characteristics, which are sex, gender reassignment, race (which includes colour, nationality and ethnic or national origins), disability, sexual orientation, religion or belief and age, that:

- has the purpose of violating a person's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that person; or
- is reasonably considered by that person to have the effect of violating their dignity or of creating an intimidating, hostile, degrading, humiliating or offensive environment for them, even if this effect was not intended by the person responsible for the conduct.

Examples of harassment would include: physical conduct ranging from unwelcome touching to serious assault; unwelcome sexual advances; demeaning comments about a person's appearance; unwelcome jokes or comments of a sexual or racial nature or about an individual's age; excluding an individual because they are associated or connected with someone with a protected characteristic, eg their child is gay, spouse is black or parent is disabled; repeated name calling related to an individual's religion or belief, ignoring an individual because they are perceived to have a protected characteristic (whether or not they do, in fact, have that protected characteristic), eg an employee is thought to be Jewish, or is perceived to be transgender; the use of obscene gestures; and the open display of pictures or objects with sexual or racial overtones, even if not directed at any particular person or relating to their actual or perceived protected characteristic, eg magazines, calendars or pin-ups.

Conduct may be harassment whether or not the person behaving in that way intends to offend. Something intended as a "joke" may offend another person. Everyone has the right to decide what behaviour is acceptable to them and to have their feelings respected by others. Behaviour that any reasonable person would realise would be likely to offend will be harassment without the recipient having to make it clear in advance that behaviour of that type is not acceptable to them, eg sexual touching. It may not be so clear in advance that some other forms of behaviour would be unwelcome to, or could offend, a particular person, eg certain "banter", flirting or asking someone for a private drink after work. In these cases, first-time conduct that unintentionally causes offence will not be harassment but it will become harassment if the conduct continues after the recipient has made it clear, by words or conduct, that such behaviour is unacceptable to them.

A single incident can be harassment if it is sufficiently serious.

If you think you are being bullied or harassed, you may be able to sort out matters informally. The person may not know that their behaviour is unwelcome or upsetting. You may feel able to approach the person yourself, or with the help of someone else at the organisation. You should tell the person what behaviour you find offensive and unwelcome, and say that you would like it to stop immediately.

If an informal approach does not resolve matters, or you think the situation is too serious to be dealt with informally, you can make a formal complaint by using the organisation's grievance procedure [bullying and harassment procedure]. In the case of grievances about bullying or harassment, the normal grievance procedure is modified so that you can choose whether to raise your grievance with your manager

or with another manager.

All complaints will be investigated promptly and, if appropriate, disciplinary proceedings will be brought against the alleged harasser. You will have the right to be accompanied by a fellow worker or trade union official of your choice at any meeting dealing with your grievance. You will be kept informed of the general progress of the process of investigation and, subject to data protection requirements, the outcome of any disciplinary proceedings.

The Charity will treat complaints of bullying and harassment sensitively and maintain confidentiality to the maximum extent possible.

You have a right not to be victimised for making a complaint in good faith, even if the complaint is not upheld. However, making a complaint that you know to be untrue may lead to disciplinary action being taken against you.

Your responsibilities

Every employee is required to assist the organisation to meet its commitment to provide equal opportunities in employment and avoid unlawful discrimination.

Employees can be held personally liable as well as, or instead of, the organisation, for any act of unlawful discrimination. Employees who commit serious acts of harassment may be guilty of a criminal offence.

Acts of discrimination, harassment, bullying or victimisation against employees or customers are disciplinary offences and will be dealt with under the organisation's disciplinary procedure. Conduct of this type will often be gross misconduct which can lead to dismissal without notice.

Procedure

Breaches of this policy will be dealt with under the charity's Disciplinary Procedure. You should be aware that the charity regards breach of any part of this policy as gross misconduct that may result in disciplinary action up to and including dismissal without notice.

Key Legislation

- Health and Safety at Work etc Act 1974
- Protection from Harassment Act 1997
- Equality Act 2010
- Management of Health and Safety at Work Regulations 1999 (SI 1999/3242)

The Equality Act 2010 defines direct discrimination as less favourable treatment because of a protected characteristic. The protected characteristics under the Equality Act 2010 are:

- age;
- disability;
- gender reassignment;
- marriage and civil partnership;
- pregnancy and maternity;

- race;
- religion or belief;
- sex; and
- sexual orientation.

Indirect discrimination against individuals because they have a relevant protected characteristic is also covered (although pregnancy and maternity do not explicitly come under the indirect discrimination provisions in the Equality Act 2010, they are covered by the provisions on indirect sex discrimination).

Employers will be liable for acts of unlawful discrimination committed by their employees against other employees or customers in the course of their employment unless employers can show that they took all reasonable steps to prevent those acts. There is no limit on compensation for unlawful discrimination, which includes compensation for injury to feelings and personal injury.

A person can be liable where they knowingly help someone to discriminate against, harass or victimise another person or knowingly help to instruct, cause or induce discrimination. In certain circumstances, liability for such conduct may extend beyond the end of the employment relationship. Liability is avoided if the employee can establish that they placed reasonable reliance on a statement by the person to whom assistance was given to the effect that the act was not unlawful.

Section 158 of the Equality Act 2010 permits employers to take positive action in respect of people who share the same protected characteristic and experience disadvantage, have different needs or have disproportionately low participation in the form of proportionate measures to overcome a perceived disadvantage, meet specific needs based on a protected characteristic or encourage participation. For example, an employer could mentor ethnic minority employees who are under-represented in management roles

Section 159 of the Equality Act 2010 permits employers in specific circumstances to recruit or promote a person with one protected characteristic in preference to another person who does not have the protected characteristic. For example, an employer could appoint a female candidate to a senior role over a male candidate where it reasonably thinks that there are few women in senior roles in the organisation and the candidates are as qualified as each other.

Section 13(3) of the Equality Act 2010 allows employers to treat a disabled person more favourably in comparison to a non-disabled person. This means that an employer can, for example, take positive action by lawfully limiting recruitment, training and promotion opportunities to disabled people, without this amounting to unlawful direct discrimination against a non-disabled person.

The Equality Act 2010 makes harassment unlawful across all the protected characteristics, with the exceptions of marriage and civil partnership, and pregnancy and maternity (which are covered by direct discrimination provisions in the Equality Act 2010). Harassment is defined as unwanted conduct related to a relevant protected characteristic that has the purpose or effect of:

- violating a person's dignity; or
- creating an intimidating, hostile, degrading, humiliating or offensive environment.

For example, a male employee may be subjected to insulting and humiliating

comments from his line manager because he is a Muslim. That employee can bring a claim for harassment related to the protected characteristic of religion or belief. In addition, if that employee's colleagues are also present when these comments are made, even though they are not directed at those individuals, they may also bring a claim for harassment related to the protected characteristic of religion as the line manager is creating an intimidating and offensive environment.

The Act sets out two specific definitions of sexual harassment, which are:

- conduct of a sexual nature that has the purpose or effect of violating a person's dignity, or creating an intimidating, hostile, degrading, humiliating or offensive environment; and
- less favourable treatment related to sex or gender reassignment that occurs as a result of a rejection of, or submission to, sexual conduct.

In determining whether or not the unwanted conduct has the effect referred to, the factors that must be taken into account are:

- the perception of the complainant;
- the other circumstances of the case; and
- whether or not it is reasonable for the conduct to have that effect.

Harassment also includes the following:

Harassment based on association. It is unlawful to discriminate against or harass any individual for association with another individual who has a protected characteristic (other than marriage and civil partnership, and (according to guidance from the Government and ACAS) pregnancy and maternity). For example, if an employer denies an employee a promotion because she is taking care of a disabled relative and the employer thinks that the employee will not have any time for new duties, this would amount to associative discrimination as disability is one of the specified protected characteristics. Similarly, if an employer harasses an employee because his brother is gay, this would be unlawful as associative harassment as sexual orientation is another of the protected characteristics.

Harassment based on a perception. It is unlawful to discriminate against or harass any individual based on a perception that they have a particular protected characteristic (other than marriage and civil partnership, and pregnancy and maternity) when they do not, in fact, have the protected characteristic. For example, a male employee may look much older than his age. If the organisation does not allow him to make presentations to clients because his line manager thinks that he is too old, the employee has been discriminated against because of a perception of the protected characteristic of age, even though he may be relatively young. Similarly, if an employee is called names and made fun of because his colleagues believe that he is transgender, he may have a claim for perceptive harassment related to the protected characteristic of gender reassignment, even though he is not transgender.

There are no provisions in the Equality Act 2010 to cover third-party harassment. This does not mean that employers can be relaxed about complaints from employees of harassment by third parties. An employer can be liable for unlawful discrimination for failing to prevent harassment if its reason for not taking preventative action was because of a protected characteristic or because the individual had previously raised an issue of unlawful discrimination. In addition, employees who have been subjected to harassment by a third party may still bring a claim against their employer for constructive dismissal if the employee resigns and claims that the employer's failure

to protect them amounts to a breach of contract. An employer can also be liable for negligence if the employee suffered mental and/or physical injury because of harassment by a third party that the employer could reasonably have foreseen and prevented or reduced. Employers should therefore continue to ensure that they take all reasonably practicable steps to prevent any harassment of employees.

Victimisation occurs where an employee is subjected to a detriment, such as being denied a training opportunity or a promotion, because they made or supported a complaint or raised a grievance under the Equality Act 2010, or because they are suspected of doing so. However, an employee is not protected from victimisation if they acted maliciously or made or supported an untrue complaint in bad faith. There is no need for a complainant to compare their treatment with someone who has not made or supported a complaint under the Equality Act 2010. For example, if a blind employee raises a grievance that the employer is not complying with its duty to make reasonable adjustments, and is then systematically excluded from all meetings, such behaviour could amount to victimisation.

Subject to limited exceptions in some circumstances for religion or belief and sexual orientation, it is unlawful to discriminate directly or indirectly, harass or victimise a member of the public based on any of the protected characteristics in the provision of services or goods.

Employers will be liable for discriminatory acts of harassment committed by their employees against other employees or customers in the course of their employment unless they can show that they took all reasonable steps to prevent those acts. Employers will also be liable for acts of unlawful discrimination against their employees that are committed by a third party who is engaged by the employer as its agent. Employers are not able to avoid liability by showing that they took all reasonable steps to prevent the agent's discrimination. There is no limit on compensation for unlawful discrimination, which includes compensation for injury to feelings and personal injury.

The European Commission Recommendation 92/131/EEC and Code of Practice on the protection of the dignity of women and men at work made recommendations on how employers, trade unions and employees should combat sexual harassment. The Code of Practice defines harassment as "unwanted conduct of a sexual nature, or other conduct based on sex affecting the dignity of women and men at work".

The Protection from Harassment Act 1997 created a new statutory tort of harassment and provided a civil remedy for those subjected to harassment at work or outside work. Section 1 provides that a person must not pursue a course of conduct that amounts to harassment of another and which they know, or ought to know, amounts to harassment of the other. For these purposes, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think that the course of conduct amounted to harassment of the other.

Harassment is not precisely defined, but includes "alarming the person or causing the person distress". A course of conduct involves conduct on at least two occasions and includes speech. The Act also makes harassment a criminal offence.

Harassment may constitute other criminal offences, eg rape, indecent assault, assault or grievous bodily harm.

It may also give rise to other civil liabilities under common law, eg assault and

battery or personal injury caused by negligence. Employers can be liable to their employees for wrongful acts such as sexual assault committed by a third party, such as an independent contractor. To be liable, the relationship between the employer and the third party must be "akin to employment" and the wrongful act must be sufficiently closely connected with the tasks that the third party has been engaged by the employer to do.

An employer can be liable in damages for foreseeable personal injury, which could be mental and/or physical, suffered as a result of its negligence.

The Health and Safety at Work etc Act 1974 requires employers to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all their employees. The Management of Health and Safety at Work Regulations 1999 place specific obligations on employers including the duty to assess risks to the health and safety of their employees at work and to identify the measures that they need to take to comply with health and safety requirements. Bullying and harassment could be risks recognised in the workplace. There are criminal sanctions for failure to comply with health and safety obligations.

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