

Human Rights and Equality Policy for Service Provision and Practice in relation to the Mental Health Act 1983 (M-026)

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Policies should be accessed via the Trust intranet to ensure the current version is used

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1. INTRODUCTION

Humber Teaching NHS Foundation Trust recognises that good practice is the key to ensuring the Trust meets its legal responsibilities set out in the Equality Act 2010 and the Human Rights Act (1998). Humber Teaching NHS Foundation Trust is committed to eliminating individual and institutional discrimination, harassment and victimisation across all protected characteristics set out in the Equality Act 2010 which are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation.

“Commissioners and providers should have in place a human rights and equality policy for service provision and practice in relation to the Act, which should be reviewed at Board (or equivalent) level at least annually” (Mental Health Act Code of Practice 2015 (3.15)).

1.1 Care Quality Commission (CQC) – Fundamental Standards of Quality and Safety

This policy supports compliance with the Care Quality Commission Regulation 10: Dignity and respect is concerned with ensuring every individual coming into contact with the service is treated with dignity and respect.

Human rights should have a place at the heart of mental healthcare. Freedom, Equality, Dignity and Autonomy (FREDA) are put forward as agreed human rights principles.

1.2 Equality and Diversity

Equality of opportunity is about viewing individuals positively and recognising that everyone is different, valuing equally the contribution that an individual's experience, knowledge and skills can make. Diversity is about appreciating the differences in aspirations, customs and traditions we all have in society.

This policy contains measures under the Equality Act 2010 to ensure as far as possible no one in the organisation discriminates (directly or indirectly) or victimises another person on the grounds of age, disability, gender reassignment, gender identity, gender expression, marriage and civil partnership, pregnancy and maternity, race, religion and belief, sex, sexual orientation (please refer to Appendix 2 for full details).

The legislation covers discrimination on the following grounds (please see Appendix 2):

- Direct Discrimination
- Associative discrimination
- Perceptive discrimination
- Indirect discrimination
- Harassment
- Third party harassment
- Victimisation

1.3 Human Rights

Human rights legislation provides a framework for commissioners and providers to deliver the best possible outcomes for everyone who uses services. This means:

- putting human rights principles and standards into practice,

- aiming to secure the full enjoyment of human rights for all, and
- ensuring rights are protected and secured.

Mental Health Act Code of Practice (2015)

1.4 Commitment to Human Rights Approach

'Human rights' are the basic rights and freedoms that belong to every person in the world. They are the fundamental things that human beings need in order to flourish and participate fully in society.

The Human Rights Act 1998 sets universal standards to ensure that a person's basic needs as a human being are recognised and met. Public authorities are required to have arrangements in place to ensure that they comply with equality and human rights legislation, and it is unlawful for public sector organisations to act in a way that is incompatible with the legislation.

The Act encourages public authorities to apply a human rights approach to decision making across public services in order to achieve better service provision. The Care Quality Commission standards stipulate requirements related to human rights. The Trust's core purpose of putting patients first embodies the principles of respecting human rights.

In particular circumstances Human Rights can be limited or restricted, but rights can never be taken away completely. Human Rights provide a set of minimum standards and are a vital safety net for the treatment we can all expect from our services.

The Human Rights Act 1998 brought the European Convention on Human Rights into UK law. There are 14 articles in total and some of these are particularly relevant to the provision of health and social care services.

The equality benefits of a human rights based approach include:

- An improved quality of health services – patients treated with fairness, respect, equality and dignity
- More person-centred care
- A reduced risk of complaints and litigation
- A broader range of marginalised groups being involved and considered
- More meaningful engagement of patients, carers and families
- Better services and outcomes; can help drive up quality and improve outcomes
- Provision of a practical framework to help improve current processes (not about completely changing what you do)
- Familiar shared values; dignity, respect, fairness, autonomy, equality and choice – upholding these values under challenging circumstances

Key Human Rights for Mental Health and Learning Disability services

Whilst all the Human Rights Articles are applicable to every person there are seven Articles that are key for mental health and learning disability services, these are:

Article 2 – The right to life includes a duty not to take away anyone's life, a positive duty to take reasonable steps to protect life and a procedural duty to investigate deaths where public officials may be implicated/involved.

Article 3 – The right to be free from torture, inhuman and degrading treatment. This is an absolute right. It imposes three types of obligations on public officials:

- A negative duty **not** to torture or treat someone in an inhuman and degrading way
- A positive duty to take reasonable steps to protect people known to be at risk of such treatment
- A procedural duty to investigate where torture, inhuman or degrading treatment has occurred

Article 5 – The right to liberty is a non-absolute right. In specific circumstances liberty can be limited, e.g. detention under Mental Health Act or prison. The right to liberty is not a right to be free to do whatever you want. It is a right not have extreme restrictions placed on a person's movement. It includes procedural safeguards such as review mechanisms and time limits. It also includes a right to take proceedings and challenge the lawfulness of detention and is therefore connected to Article 6 below.

Article 6 – The right to a fair trial. This is particularly significant for patients detained under the Mental Health Act 1983 and they must be regularly informed of their rights with regards to the right to appeal against their detention.

Article 8 – The right to respect for private and family life, home and correspondence. This right is non-absolute and can be restricted. It has to be balanced against the rights of others and the needs of society. This right involves three types of obligations on public officials:

- A negative duty **not** to interfere with people's family life, private life, home and correspondence
- A positive duty to take reasonable steps to protect people known to be at risk of having their rights violated, especially in relation to mental and physical well-being
- A procedural duty to ensure fair decision-making processes

Article 9 – The right to freedom of thought, conscience and religion. Cultural and religious beliefs of services users and their carers should be fully respected and provisions made to ensure they are able to participate as much as possible in their practices.

Article 14 – The right to non-discrimination in relation to any of the rights contained in the Human Rights Act. This right can only be used in conjunction with another right or rights. The definition of discrimination is broader than that of the Equality Act and a person can bring a case of discrimination for any reason.

In addition the following is also applicable for mental health and learning disability services:

Protocol 1, Article 1 – Right to peaceful enjoyment of your property

Every natural or legal person is entitled to the peaceful enjoyment of his possessions. No one shall be deprived of his possessions except in the public interest and subject to the conditions provided for by law and by the general principles of international law.

The Trust will consider these human rights principles in relation to service users and their carers at all times. The Trust aims to demonstrate its commitment to quality outcomes that will improve the experience of patients in the services provided; as well as fostering an environment in which staff feel valued in and positive about the work that they undertake.

2. SCOPE

This policy is specific to any member of staff who is caring for an individual who is in detained under the MHA or where consideration is being given to the use of the MHA.

This policy applies to all employees directly employed by the Trust, Bank and agency staff, and volunteers.

It should be read in conjunction with the Mental Health Legislation Policy and where appropriate, reference should be made to other Trust policies (e.g. Seclusion, ECT, Inpatient Search).

The purpose of this policy is to ensure that there is a fair and consistent approach across all staff groups with regards to adherence to the Human Rights Act and Equality Act within service provision.

3. DEFINITIONS

FREDA - Freedom, Equality, Dignity and Autonomy MHA – Mental Health Act 1983

CQC – Care Quality Commission

ECHR - European Convention on Human Rights

CTO – Community Treatment Order

4. DUTIES AND RESPONSIBILITIES

Legal Liability

The Trust as an employer may be liable for any act of unlawful discrimination committed by its staff during the course of their employment, unless it can be proved that all reasonable and practicable steps had been taken to prevent such an act from occurring. The Trust has a primary legal and moral responsibility for ensuring that discrimination does not occur.

Individual members of staff can be held personally liable for acts of unlawful discrimination.

On initial consultation consideration must be given to the individual's need for reasonable adjustments and must be recorded in the electronic patient record, e.g. communication need.

The organisation complies with applicable human rights and equality legislation by ensuring all staff have access to this policy and other Human Rights and Equality legislation (refer to Section 9) and they consider the seven Human Rights articles (as listed above) for Mental health and learning disability services throughout their practice. Trust staff must also consider the Local Authorities' Health Inequalities legislation.

Chief Executive

To assure the Board that this policy is acted on through delegation to directors and the appropriate committees.

Trust Board

To ensure that this policy is acted on through delegation of responsibility for the development and implementation of the policy to directors and appropriate Committees. They will also ensure the policy; procedure and guidelines comply with UK law

requirements. To ensure this policy is monitored and reviewed formally through the appropriate committees, e.g. MHLC.

Director of HR & Diversity

The Director of HR & Diversity has overall responsibility for leading and promoting the equality agenda.

Medical Director and Chief Operating Officer

The Medical Director and Chief Operating Officer have responsibility for the development, review / monitoring of this policy and for the appropriate training and education to support implementation.

Medical Director and Responsible Clinicians

The Medical Director is responsible for ensuring that procedures are understood and carried out by medical staff involved in the implementation of any detentions / restrictions under the Mental Health Act.

Divisional Leads, Modern Matrons, Team Leaders, and Charge Nurses

Divisional Leads, Modern Matrons, Team Leaders, and Charge Nurses are responsible for implementing operational systems to ensure adherence to the principles and standards of the protocol.

It is the responsibility of all senior staff to ensure this policy is fairly and consistently applied by all of the staff they manage. All managers should ensure that:

- All staff are made aware of the contents and the importance of observing the principles of Human Rights and Equality.
- Any allegations of discriminatory behaviour or practices are properly investigated, all relevant documentation retained and disciplinary action taken (where appropriate)
- They are positive role models for their staff
- They address any discriminatory practices or behaviours towards service users and ensure that service users are supported appropriately
- Ensure staff have valid and up to date Equality, Diversity and Human Rights, training

The My Assurance Standard Operating Procedure sets out how the organisation will review the environment and culture of wards to ensure the organisation is providing therapeutic environments and patients are treated with dignity and respect, involved in discussions about their care and treatment and their culture and ethnicity are respected.

Matrons

- The matron is responsible for ensuring that the following audits are undertaken across areas within their sphere of responsibility
- The matron will work with the charge nurse or practice manager to ensure that the audits are undertaken as defined for each area:
 - Matron
 - Infection, Prevention and Control
 - Medication
 - Seclusion
 - Long term segregation
 - Care away from others (CAFO)

- Mental Health Act
- Staff
- Patients
- Record keeping

Charge Nurses

The charge nurse will ensure that issues raised within the audits are discussed within the next business/team meeting to ensure all issues are addressed in a timely manner. If, however there are issues of significant concern, these would be raised at the next handover for immediate action.

All staff

All staff will ensure that:

- They maintain professional behaviour and good management practices at all times, as the reputation of the organisation within the community relies on this. Professional attitudes and good conduct and behaviour are crucial to equality in the delivery of services and the carrying out of its functions
- They take responsibility to ensure that they do not discriminate against anyone and promote a climate free from unacceptable behaviour. Each individual must ensure that their own conduct, and that of their colleagues, does not cause offence. Staff are encouraged to challenge and report to their managers, if they suspect that discrimination, harassment, bullying, abuse, victimisation or offensive behaviour has taken place
- They co-operate and adhere to measures introduced by the organisation to ensure equality of opportunity and non-discrimination in service delivery

5. GUIDANCE

To achieve implementation of this policy, Humber Teaching NHS Foundation Trust will:

- Create a working environment within which staff and patients respect and value each other, developing positive working relationships
- Ensure staff receive Equality, Diversity and Human Rights training as per Statutory/Mandatory training matrix
- Publish an annual equality, diversity and inclusion report
- Place importance on improved access and outcomes for people from BAME groups with a focus on providing care that reduces the likelihood of detention
- Use headline measures of mental health equality to monitor change over time, at both national and local levels, and where improvements need to be made.
- Work with NHS Digital and PHE to improve reporting on equality data, and increase the range of published equality metrics in fingertips profiles and other publications which systems can readily access.
- Apply Human Rights principles and frameworks and continuously review their impact on people to improve patients' experience and make sure they are protected and respected
- Implement and oversee how human rights and equality issues are monitored
- Encourage involvement of carers / families – patient records should demonstrate that this is built into care planning and implementation
- Avoid blanket rules and restrictions
- Reduce the use of segregation – records should evidence demonstrable steps to help patients build the skills or tolerance for being around other people

- Provide information for community patients to ensure they understand that medication cannot be imposed under a CTO
- Ensure that detained patients are being given information about their rights and being offered the support of an IMHA
- Ensure that informal patients understand the obligations of staff to protect them while respecting their right to leave the ward such that a risk assessment can be shown to have been undertaken if the patient does choose to leave.

This list is unlikely to be comprehensive, and there are many areas of mental healthcare which engage human rights ranging from detention through to contact with visitors. The key is to be able to show systems and practices which take them into account and facilitate a balancing exercise such that, for example, a patient's right to confidentiality is respected because of his particular situation, where for another similar patient his need for protection from unlawful detention is upheld by information going to third parties. The personal circumstances of the individual patients will be the critical feature.

Closed Cultures

Staff should read the Care Quality Commission's paper on "Identifying and responding to closed cultures". The abuse at Whorlton Hall, Winterbourne View, Mid Staffordshire Hospital and other services highlighted the abuse and other breaches of human rights that result from closed cultures and the impact that these had on people.

This guidance will support operational staff to:

- understand what a closed culture is
- identify a closed culture
- understand what potential breaches of our fundamental standards involving human rights look like
- be alert to signs of breaches of our fundamental standards in services with a closed culture
- know the right questions to ask at the right time
- ensure the voices of people who use services are sought, listened to and acted on
- determine next steps if evidence is uncovered that suggests people are at risk of harm or have experienced harm or abuse.

During the COVID-19 pandemic, there is an increased likelihood that inherent risk factors and warning signs will be present in more services. This is because more services are effectively operating as closed environments with a reduction in external oversight and with potential staffing and leadership challenges. As a result, we must be more mindful of identifying where closed environments might develop into closed cultures.

By a closed culture we mean **a poor culture that can lead to harm, which can include human rights breaches such as abuse**. Any service that delivers care can have a closed culture, and features of a closed culture include:

- staff and/or management no longer seeing people using the service as people
- very few people being able to speak up for themselves. This could be because of a lack of communication skills, a lack of support to speak up, or fear of abuse.

This may mean that people who use the service are more likely to be at risk of harm. This harm can be deliberate or unintentional. It can include abuse, human rights breaches or clinical harm.

People using services that have closed cultures, are more likely to be exposed to risks of abuse, avoidable harm and breaches of their rights under the Human Rights Act 1998 and the Equality Act 2010.

Equality law

Under the Equality Act 2010, people using services have the right not to be discriminated against on the basis of protected characteristics, such as their gender, ethnicity, disability, religion or belief, sexual orientation, or gender identity – or even perceived protected characteristic, such as perceived sexual orientation.

Disabled people also have a right to ‘reasonable adjustments’ to ensure that they do not experience a lesser standard of care simply on the basis of their disability. Reasonable adjustments to help people to communicate, as outlined in the Accessible Information Standard, are also a legal requirement under the Equality Act 2010. Reasonable adjustments may be less likely to be made in closed cultures that are responding to people’s individual needs in relation to their environment. For example, the sensory needs of autistic people or the needs of people with mobility or cognitive impairments to maximise their independence through having easy access to mobility aids or dementia-friendly environments.

It is important that we also identify if there are circumstances where people’s human rights or rights under the Equality Act are at risk of or are already being potentially breached in **any** health and care setting in both services with closed cultures and those without. For example, if there is bullying or taunting by staff towards people using services, this may be based on a protected characteristic such as their disability or ethnicity.

There are many ways that we can listen to people’s voice. However, to make sure that we can make the most reliable judgement of how our services are providing care, in all services we must:

- make sure we gather people’s voices through different ways for example through translators, British sign language, Makaton, talking mats etc.
- take notice and give appropriate weight to people’s voice in the evidence we gather to inform risk, in the actions that we take and within our reporting.
- think about what the person may be telling you either directly or indirectly – could it be signs of a closed culture or abuse, including human rights breaches?

Prioritising care reviews

It is important to prioritise reviewing the care of people who might be more vulnerable to human rights breaches. This includes:

- people that the service identifies as showing distressed behaviour, which can be challenging for the service
- anyone currently in long-term segregation and/or deprived of their liberty through, for example, a Deprivation of Liberty Safeguard, or detained through Mental Health Act
- people a long way from home or without regular visitors
- people who have been abused in other settings or have ‘allegation risk assessments’ in place
- people who face significant barriers in giving feedback themselves, for example people who are non-verbal.

Reviewing individuals' care

Consider the following when reviewing individuals' care:

- Do the care plans give a good picture of the person, what their care and treatment is and how they are being supported?
- Do the care plans describe people and their needs in a respectful way?
- Are there reasonable adjustments in place for individual disabled people? For example, in relation to communication, sensory overload and reducing distress.
- Does the service meet the Accessible Information Standard?
- If the needs of people with distressed behaviours are not met, there is a higher risk of a culture reliant on excessive restraint developing (this could be physical, chemical, mechanical, seclusion or segregation.) Are triggers for distressed behaviour clearly documented and are techniques for preventing behaviours from escalating documented?
- The National Autistic Taskforce has produced an independent guide to the quality of care for autistic people, which highlights many relevant issues for autistic people.
- Reviewing an individuals' care should include speaking to or communicating with the person if possible and to their relatives or friends.

6. CONSULTATION

MHL Steering Group

EDI and inequalities operational group, including attendance from all of the Trust's EDI staff networks

7. IMPLEMENTATION AND MONITORING

This policy will be disseminated by the method described in the Document Control Policy
This policy does not require additional financial resource.

The provision of reasonable adjustments that may be implemented as a result of this policy will be supported by the Trust.

This policy is available on the Trust intranet.

8. TRAINING AND SUPPORT

The Trust provides mandatory training for all staff on Equality, Diversity and Human Rights and compliance is robustly monitored across the Trust.

As a part of that training staff will be able to:

- explain the main principles of Equality and Diversity.
- define key terms including types of discrimination covered by Equality and Diversity legislation.
- identify discrimination and explain how discrimination can take place.
- describe how Trust Policies support Equality and Diversity.
- explain our responsibilities in preventing discrimination and promoting equality.
- describe ways in which unacceptable behaviour can be challenged.

9. SUPPORTING DOCUMENTS

Equality Act 2010
Human Rights Act (1998)
Mental Health Act Code of Practice 2015
Tees, Esk and Wear Valleys NHS Trust Human Rights, Equality and Diversity Policy
Leicestershire Partnership NHS Trust Equality & Human Rights Policy
Southern Health NHS Foundation Trust Equality, Diversity and Human Rights Policy
Identifying and responding to closed cultures – Care Quality Commission

Related Trust documents

Annual Equality, Diversity and Inclusion report
Patient and Carer Experience Strategy 2018-2023
Human Rights, Equality and Diversity Policy
Policy for Supporting Transgender Patients
Mental Health Legislation Policy
Blanket Restriction Policy

10. MONITORING COMPLIANCE

This explains how the policy is to be monitored or audited, and who is responsible for carrying this out, when and how often.

- The policy will be monitored through the Mental Health Legislation Steering Group and Committee.
- Annual objectives will be published in the Equality, Diversity and Inclusion annual report for the Trust Board and will be shared with the public on the Trust website.
- All Equality Impact Assessments for policies, transformations and other documents that relate to patients, carers and staff will be discussed within the appropriate forums and any issues identified will be addressed accordingly.
- Qualitative evidence on patient experiences will be shared with the Quality and Patient Safety (QPAS) group and the Quality Committee through implementation of a robust action plan which will incorporate Human Rights, Equality and Diversity.

11. APPENDICES

APPENDIX 1: THE EQUALITY ACT 2010

APPENDIX 2: HUMAN RIGHTS ARTICLES AND SCENARIOS

APPENDIX 3: DOCUMENT CONTROL SHEET

APPENDIX 4: EQUALITY IMPACT ASSESSMENT

APPENDIX 1: THE EQUALITY ACT (2010)

The Equality Act 2010 was introduced in April 2010. The main focus is to streamline, strengthen and harmonise the equality law. Additionally, this also brought about the introduction of the new Equality Duty for all Public Authorities.

The Equality Duty applies to all public organisations and includes any non-public organisations who carry out public functions. The aim of the Equality Duty is to embed equality considerations into the day to day work of public authorities, so that they tackle discrimination and inequality and contribute to making society fairer. The Equality Duty consists of a general duty, (set out in section 149 of the Equality Act 2010); and specific duties (set out in secondary legislation to accompany the Equality Act 2010). The specific duties are designed to help public bodies meet the general duty.

The aim of the general duty is to:

- Eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

Protected Characteristics



Age – where the Act refers to the protected characteristic of age, it means a person belonging to a particular age or age group. An age group includes people of the same age and people of a particular range of ages. Where people fall in the same age group, they share the protected characteristic of age.

Disability – a person has a disability if the person has a physical or mental impairment, and the impairment has a substantial and long-term adverse effect on person’s ability to carry out normal day-to-day activities.

Gender reassignment – relates to people in the process of transitioning from one gender to another.

Marriage and civil partnership – people who have or share the common characteristics of being married or of being a civil partner can be described as being in a marriage or civil partnership. A married man and a woman in a civil partnership both share the protected characteristic of marriage and civil partnership. People who are not married or civil partners do not have this characteristic.

Pregnancy and maternity – relates to women that are pregnant or within their allocated maternity period. Women that are not pregnant nor within their maternity period do not share this characteristic.

Race – for the purposes of the Act, 'race' includes colour, nationality and ethnic or national origins. People who have or share characteristics of colour, nationality or ethnic or national origins can be described as belonging to a particular racial group. A racial group can be made up of two or more different racial groups.

Religion or belief – the protected characteristic of religion or religious or philosophical belief, is also stated to include a lack of religion or belief. It is a broad definition in line with the freedom of thought, conscience and religion guaranteed by article 9 of the European Convention on Human Rights. For example, Baha'i faith, Buddhism, Christianity, Hinduism, Islam, Jainism, Judaism, Rastafarianism, Sikhism and Zoroastrianism are all religions for the purposes of this provision. Beliefs such as humanism and atheism would be beliefs for the purposes of this provision but allegiance to a particular football team would not be.

Sex (Gender) – people having the protected characteristic of sex refers to being a man or a woman, and that men share this characteristic with other men, and women with other women.

Sexual orientation – the protected characteristic of sexual orientation relates to a person's sexual orientation towards people of the same sex as him or her (in other words the person is a gay man or lesbian); people of the opposite sex from him or her (the person is heterosexual); people of both sexes (the person is bisexual).

Types of discrimination covered under Equality Act 2010

Direct discrimination – occurs when someone is treated less favourably than another person because of a protected characteristic they have or are perceived to have (see perceptive discrimination below), or because they associate with someone who has a protected characteristic.

Associative discrimination – this is direct discrimination against someone because they associate with another person who possesses a protected characteristic.

Perceptive discrimination – discrimination against an individual because it is believed that they possess a particular protected characteristic. It applies even if the person does not actually possess that characteristic.

Indirect discrimination – can occur when you have a condition, rule, policy or even a practice in your company that applies to everyone but particularly disadvantages people who share a protected characteristic. Indirect discrimination can be justified if you can show that you acted reasonably in managing your business, i.e. that it is 'a proportionate means of achieving a legitimate aim'. A legitimate aim might be any lawful decision you make in

running your business or organisation, but if there is a discriminatory effect, the sole aim of reducing costs is likely to be unlawful. Being proportionate really means being fair and reasonable, including showing that you've looked at 'less discriminatory' alternatives to any decision you make.

Harassment – is '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 except for pregnancy and maternity and marriage and civil partnership. 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. Employees are also protected from harassment because of perception and association.

Third party harassment – the Equality Act makes you potentially liable for harassment of your employees by people (third parties) who are not employees of your company, such as customers or clients. You will only be liable when harassment has occurred on at least two previous occasions, you are aware that it has taken place, and have not taken reasonable steps to prevent it from happening again.

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 who makes spurious or malicious complaints will be dealt with through our disciplinary policy.

Employment Tribunal's Powers

Previously an employment tribunal was restricted in making orders that related specifically to the benefit of a particular claimant.

An employment tribunal will now have the power to make a recommendation about an employer's workforce and working practices to help prevent discrimination in the future.

APPENDIX 2: HUMAN RIGHTS ARTICLES AND SCENARIOS

Human rights article	Scenario where the human rights article might be raised
Article 2: Right to Life	<ul style="list-style-type: none"> • If the standard of care planning or delivery places a person using a service in a potentially life-threatening situation, this raises a potential breach of Article 2. • This includes decisions and actions taken in the service where a person resides. For example, where staff fail to investigate potentially life-threatening healthcare conditions. For people with a learning disability or dementia, this could be where they fail to identify symptoms of such a condition because they do not pick up the behavioural cues from the person. • It also includes partnership working with other services. For example, during COVID-19, some services have incorporated blanket DNACPR (do not resuscitate) decisions into end of life care plans, without the correct decision making processes for individual people.
Article 3: Right to freedom from torture, inhuman or degrading treatment	<ul style="list-style-type: none"> • If the standard of care planning or delivery places a person using a service in a situation where they are experiencing ongoing and serious suffering amounting to inhuman or degrading treatment, this raises a potential breach of Article 3. • This relates to all aspects of a person’s treatment and or care planning and delivery and involves the need for robust safeguards to be in place. It includes failing to meet people’s basic needs, such providing adequate toilet facilities or drinks. • It also potentially relates to the provision of support to people who receive care from external agencies. For example the failure to make clear to external professionals the communication needs of a person if this results in serious suffering. • It also includes failing to allow people to have regular access to fresh air, or to a member of staff so someone can ask to go outside or to a toilet.

<p>Article 5: Right to liberty and security</p>	<ul style="list-style-type: none"> • If decisions taken in respect of a person's care result in disproportionate and unnecessary infringements on their liberty, this raises a potential breach of Article 5. • A persons' right to liberty must be taken into account where seclusion, long-term segregation and restraint is considered or used and where people are unable to leave a service of their own free will. Such actions must be undertaken correctly within legal frameworks, for example the Mental Capacity Act 2005 and the Mental Health Act 1983. This includes ensuring there will be appropriate safeguards and reviews in place.
<p>Article 8: Right to respect for private and family life</p>	<ul style="list-style-type: none"> • If decisions taken in respect of a person's care results in disproportionate and unnecessary infringements on their privacy, dignity and enjoyment of a family life, this raises a potential breach of Article 8. • The planning and delivery of health and social care must comply with people's right to receive dignified and respectful care. Their right to have access to family and to be afforded privacy must be central to care planning and delivery.
	<ul style="list-style-type: none"> • There are many examples, including failings by a service to support people to have regular contact with their family and friends during covid-19, the inappropriate use of CCTV and the use of degrading language by staff in front of people.

APPENDIX 3: DOCUMENT CONTROL SHEET

Document Type	Human Rights and Equality Policy for service provision and practice in relation to the Mental Health Act 1983		
Document Purpose	<p>The purpose of this policy is to ensure that there is a fair and consistent approach across all staff groups with regards to adherence to the Human Rights Act and Equality Act within service provision.</p> <p>This policy is specific to any member of staff who is caring for an individual who is in detained under the MHA or where consideration is being given to the use of the MHA.</p>		
Consultation/ Peer Review:	Date:	Group / Individual	
<i>List in right hand columns consultation groups and dates</i>	17/05/18	MCA/DoLS Sub Group	
	29/05/18	Mental Health Legislation Steering Group	
	28/06/18	Mental Health Clinical Network Meeting	
	03/03/21	EDI and Inequalities Operational Group	
	15/03/21	Mental Health Legislation Steering Group	
	13/04/21	Reducing Restrictive Interventions Group	
	14/04/21	QPAS	
	16.11.22	Mental Health Legislation Steering Group	
Approving Committee:	Mental Health Legislation Committee	Date of Approval:	06/05/21
Ratified at:	Trust Board	Date of Ratification:	19/05/21
Training Needs Analysis: <i>(please indicate training required and the timescale for providing assurance to the approving committee that this has been delivered)</i>	Training is available (mandatory) as part of current programme	Financial Resource Impact	None
Equality Impact Assessment undertaken?	Yes [<input checked="" type="checkbox"/>]	No [<input type="checkbox"/>]	N/A [<input type="checkbox"/>] Rationale:
Publication and Dissemination	Intranet [<input checked="" type="checkbox"/>]	Internet [<input type="checkbox"/>]	Staff Email [<input checked="" type="checkbox"/>]
Master version held by:	Author [<input type="checkbox"/>]	HealthAssure [<input checked="" type="checkbox"/>]	
Implementation:	<i>Describe implementation plans below - to be delivered by the Author:</i>		
	<ul style="list-style-type: none"> Dissemination to staff via Global email Individual teams responsible for ensuring policy read and understood 		
Monitoring and Compliance:	<ul style="list-style-type: none"> The policy will be monitored through the Mental Health Legislation Steering Group and Committee. Annual objectives will be published in the Equality, Diversity and Inclusion annual report for the Trust Board and will be shared with the public on the Trust website. All Equality Impact Assessments for policies, transformations and other documents that relate to patients, carers and staff will be discussed within the appropriate forums and any issues identified will be addressed accordingly. Qualitative evidence on patient experiences will be shared with the Quality and Patient Safety (QPAS) group and the Quality Committee through implementation of a robust action plan which will incorporate Human Rights, Equality and Diversity 		

Document Change History:			
<i>Version Number / Name of procedural document this supersedes</i>	<i>Type of Change i.e. Review / Legislation</i>	<i>Date</i>	<i>Details of Change and approving group or Executive Lead (if done outside of the formal revision process)</i>
1.0	<i>New Policy</i>	<i>15/05/18</i>	
2.0	<i>Full Review</i>	<i>06/05/21</i>	
2.1	<i>Amendment</i>	<i>01/11/22</i>	<i>Article 1 included on page 4 as an Article that is key for mental health and learning disability services. Approved at MHLSG and director sign-off (Kwame Fofie – 20/01/23).</i>
2.2	<i>Amendment</i>	<i>15/03/23</i>	<i>Amendment to page 5 to reflect that Article 1 – Right to peaceful enjoyment of your property is part of the first Protocol. Approved at MHLSG (15 March 2023).</i>

APPENDIX 4: EQUALITY IMPACT ASSESSMENT

Screening pro forma for strategies, policies, procedures, processes, tenders, and services

1. Document or Process or Service Name: Human Rights and Equality Policy for service provision and practice in relation to the Mental Health Act 1983
2. EIA Reviewer (name, job title, base and contact details): Michelle Nolan, Mental Health Act Clinical Manager and Mandy Dawley, Head of Patient and Carer Experience and Engagement
3. Is it a Policy, Strategy, Procedure, Process, Tender, Service or Other? Policy

Main Aims of the Document, Process or Service

The main aim of this policy is to provide a consistent framework to ensure that the Trust complies with all aspects of the Human Rights Act 1998 and the Equalities Act 2010 in their delivery of service to patients detained under the Mental Health Act.

Please indicate in the table that follows whether the document or process has the potential to impact adversely, intentionally or unwittingly on the equality target groups contained in the pro forma

Equality Target Group	Is the document or process likely to have a potential or actual differential impact with regards to the equality target groups listed? Equality Impact Score	How have you arrived at the equality impact score?
<ol style="list-style-type: none"> 1. Age 2. Disability 3. Sex 4. Race 5. Religion or belief 6. Sexual Orientation 7. Gender Re-assignment	<p>Low = Little or No evidence or concern (Green)</p> <p>Medium = some evidence or concern (Amber)</p> <p>High = significant evidence or concern (Red)</p>	<ol style="list-style-type: none"> a) who have you consulted with b) what have they said c) what information or data have you used d) where are the gaps in your analysis e) how will your document/process or service promote equality and diversity good practice

Equality Target Group	Definitions	Equality Impact Score	Evidence to support Equality Impact Score
Age	Including specific ages and age groups: Older people, Young people, Children, Early years	Low	This policy is consistent in its approach regardless of age. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Disability	Where the impairment has a substantial and long term adverse effect on the ability of the person to carry out their day to day activities: Sensory, Physical, Learning, Mental Health (and including cancer, HIV, multiple sclerosis)	Low	This policy is consistent in its approach regardless of disability. For patients who have a communication need or have English as their second language consideration must be given to providing information in an accessible format. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Sex	Men/Male, Women/Female	Low	This policy is consistent in its approach regardless of gender. Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.
Race	Colour, Nationality,	Low	This policy is consistent in its

	Ethnic/national origins		<p>approach regardless of race. It is acknowledged however that for any patient whose first language is not English, as information needs to be provided and understood, staff will follow the Trust interpretation procedure.</p> <p>Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.</p>
Religion or Belief	All Religions Including lack of religion or belief and where belief includes any religious or philosophical belief	Low	<p>This policy is consistent in its approach regardless of religion or belief.</p> <p>Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.</p>
Sexual Orientation	Lesbian, Gay Men, Bisexual	Low	<p>This policy is consistent in its approach regardless of sexual orientation.</p> <p>Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.</p>
Gender Re-assignment	Where people are proposing to undergo, or have undergone a process (or part of a process) for the purpose of reassigning the person's sex by changing physiological or other attribute of sex	Low	<p>This policy is consistent in its approach regardless of the gender the individual wishes to be identified as.</p> <p>We recognise the gender that people choose to live in hence why the terms gender identity and gender expression ensure we are covering the full spectrum of LGBT+ and not excluding trans, gender fluid or asexual people.</p> <p>Staff must carry out mandatory Equality, Diversity and Human Rights training via e-learning.</p>

Summary

Is a FULL Equality Impact Assessment required?	Yes	No
Please describe the main points arising from your screening that supports your decision above:		
The policy is specifically aimed at the protection of all service users and their carers under the Equalities Act 2010 and the Human Rights Act. Significant attention has been paid to ensure that no groups are discriminated against either directly or indirectly.		
EIA Reviewers: Michelle Nolan, Mental Health Act Clinical Manager Mandy Dawley, Head of Patient & Carer Experience and Engagement		
Date completed: 15 March 2023	Signature: M Nolan and M Dawley	