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	Non-Clinical Risk Committee		
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	Local Negotiating Committee		
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# **Policy on Equality, Diversity and Human Rights**

**Policy ID: GEN 6.2**

**January 2010**

**Sponsoring Director: Director of Human Resources  
and Organisational Development**

# Equality, Diversity and Human Rights Policy ID: SE GEN 6.2

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### Abbreviations and Acronyms

◆	Board Board of Directors
◆	CD Clinical Director
◆	CMT Clinical Management Team
◆	GM General Manager
◆	ID Identification
◆	HR Human Resources
◆	BME Black and Minority Ethnic

# TRUST POLICY ON EQUALITY AND DIVERSITY AND HUMAN RIGHTS (Policy ID: GEN 6.2)

## 1. STATEMENT OF INTENT

### **Equality, Diversity & Human Rights Policy Statement**

Barnsley Hospital NHS Foundation Trust is committed to being an organisation within which diversity is valued and appreciated, regardless of race, age, disability, gender, sexual orientation, faith or religion and socio - economic status. The Trust recognises that everyone is different, valuing the unique contribution that individual experience, knowledge and skills can make in delivering service goals and that is visible and apparent at all levels of the organisation. Service provision and staff needs are provided regardless of diversity.

The Trust's priority is to continue to develop and change its organisational culture by showing true commitment in providing appropriate training and information for all staff, in order to raise awareness of diversity. The Trust will continue to work towards equality in all service provision, recognising and meeting the needs of the diverse communities the Trust serves.

The Trust will continue to strive to provide an environment in which people want to work and to be a model employer leading in good employment practice. The Trust is also committed to enabling each member of staff to achieve their full potential in an environment characterised by dignity and mutual respect.

The Trust will not tolerate discrimination, victimisation, bullying or harassment of any kind by any party. Any action found to be in breach of any of these would be addressed in accordance with the Trust's Policies and Procedures.

**Equality** is not about treating everyone the same, it is about ensuring that access to services and opportunities are available to all by taking into account of people's differing needs and capabilities.

**Diversity** is about recognising and valuing differences through inclusion and service provision, regardless of age, disability, gender, race, religious belief and sexual orientation. It is also about consideration and valuing all staff's needs regarding such matters as: - commitments outside work, equal pay, career development and promotion opportunities, trade union activity, opinions and values of all staff.

## 2. **The Trust's approach to Equality and Diversity**

The aspirations of the Race Relations (Amendment) Act 2000, The Disability Discrimination Act 1995 and Gender Equality Duty 2007 are integral to the way in which the Trust recruits and supports its workforce. The Trust continues to be a Disability symbol user by meeting all five commitments, including the recruitment and retention of employees with disabilities, and raising awareness of disability issues. An example of how it achieved that was the development of a pathway, aimed at supporting staff with disabilities to remain in their jobs, or to find suitable alternatives. The Trust Corporate Curriculum includes Equality and Diversity awareness. The Trust will also offer a continuing programme of equality and diversity training, delivered to staff from all parts of the organisation, with the ultimate aim of training every new and

existing employer over a three year period. The Trust also provides Impact Assessment training for policy authors and staff within divisions.

The Trust's existing Race Equality Scheme, Gender Equality Scheme and Disability Equality Scheme will be replaced by a Single Equality's scheme, The Single Equality scheme will cover all aspects of diversity as new and merging legislation unfolds. Objectives set out in this scheme will be monitored through the Trust's Equality and Diversity Steering Group.

## **1. INTRODUCTION**

Barnsley Hospital NHS Foundation Trust ("the Trust") recognises that individual and institutional discrimination obstruct the fundamental aims and objectives of the Trust as a public service provider. In addition, the Trust respects and values the diversity of its workforce and its patients, service users, relatives, carers and visitors ("patients/visitors"). It is therefore committed to working towards genuine equality of opportunity and outcome.

This Policy sets out the aims and objectives of the Trust and also the responsibilities of various parties in maintaining and promoting equality & diversity.

The Trust acknowledges the benefits of equality & diversity in:

- (a) serving its community in a way which is appropriate, accessible and responsive;
- (b) making best use of the range of talent and experience available within its workforce and potential workforce; and
- (c) ensuring that its legal obligations are fulfilled.

This policy has been agreed and reviewed in consultation with Staff Side, the collective body representing all Trade Unions.

## **2. AIMS & OBJECTIVES**

The aim of this Policy is to ensure that the Trust's service delivery and employment practices are of the highest possible equality standards.

This can be achieved by working towards providing services that are appropriate, accessible and responsive, and by working towards ensuring fair and inclusive employment practices.

## **3. TRUST COMMITMENT & EXPECTATIONS**

On behalf of the Trust the Trust Board has given its full commitment to the adoption and promotion of the key principles of equality & diversity contained within this Policy.

The Trust intends to "mainstream" high equality standards into everything it does and considers this Policy to embody one of its pervasive key organisational principles. The Trust therefore expects its staff, patients and visitors to act in accordance with the principles and standards contained in this Policy in every dimension of delivering or receiving the Trust's healthcare services and of participating in its organisational culture.

As a minimum equality standard, subject to overriding national guidance and statutory legislation all employees, job applicants and patients/visitors can expect to receive **no** less favourable treatment on the grounds of:

- race,
- religion,
- ethnic or national origin,
- gender,
- sexual orientation,
- transgender status or identity
- disability (including hidden impairments such as mental illness and relevant diseases),
- domestic circumstances,
- social and employment status,
- age, or
- political affiliation or Trade Union membership.

Any discriminatory practice within the Trust in contravention of this Policy is unacceptable. Such practice will result in disciplinary action being taken where this is appropriate.

The Trust also expects external agencies and contractors to act in accordance with the principles and standards contained in this Policy.

#### 4. KEY RESPONSIBILITIES

**All staff** have a personal responsibility for the application of this Policy on a day-to-day basis. This means they should not undertake any acts of discriminatory practice in the course of their employment. Furthermore, staff should positively promote high equality standards in the course of their employment wherever possible. Finally, all staff have a responsibility to bring any potentially discriminatory practice to the attention of either their Line Manager, the Human Resources Department or relevant Trade Union/Professional Associations.

**Patients/visitors** will be expected to recognise and comply with the principles set out in this Policy whilst on the Trust's premises or whilst receiving care originating from the Trust. In particular, patients/visitors are expected to be respectful to all staff and other patients. Patients/visitors who are verbally or physically abusive or who make derogatory statements that are of a discriminatory nature to any staff or other patients should be aware that they will be challenged about their behaviour. Where appropriate, the Trust may consider limiting or withdrawing the provision of services to patients/visitors, and may seek to prosecute individuals where it deems necessary.

**Contractors and their staff** have an equal responsibility to ensure that this policy is adhered too and will be the subject of any contract compliance monitoring.

**Trust Managers** hold responsibility for ensuring the practical application of this Policy and for the incorporation of its principles into all other Trust policies and procedures. Managers should be aware that they will be expected to positively promote high equality standards, and in particular to promote good race relations in line with the requirements of the Race Relations (Amendment) Act 2000.

The **Trust Board** will ensure that all managers are accountable for the promotion and implementation of this Policy. The Trust Board will monitor progress on equality and diversity issues and initiatives on a regular basis, and will ensure the implementation of any relevant actions points and plans concerning equality and diversity issues.

The **Human Resources** function has specific responsibility to ensure the promotion of equality and inclusiveness through its employment practices, policies and procedures, and in supporting the application of this Policy. The Trust will employ an Equality and Diversity Advisor who will report to the Director and Deputy Director of Human Resources on all matters relating to equality, diversity and human rights.

The Trust will establish an '**Equality and Diversity Strategy Group**' (EDSG) that shall be embedded in the governance arrangements for the organization.

## 5. LEGISLATIVE FRAMEWORK

This Policy is underpinned by extensive legislation, which places individual legal responsibilities on staff and patients/visitors and collective legal responsibilities on the Trust.

The legislation on which this Policy relies, directly or indirectly, include:

- Equal Pay Act 1970
- Sex Discrimination Act 1975
- Sexual Orientation Regulations 2003
- Race Relations Act 1976
- Disability Discrimination Act 1995
- Human Rights Act 1998
- Race Relations (Amendment) Act 2000.
- Religion or Belief regulations 2003
- Age Regulations 2006

The above list is not exhaustive and will be reviewed regularly (in line with review of this Policy).

This legislation will be made accessible through links on the Trust's intranet site wherever possible.

This Policy also relies on official Codes of Practice and Guidance published in conjunction with the above legislation.

In addition, this policy seeks to support the full implementation of National Social Partnership forum recommendations and to build upon the legal framework through the promotion of good practice.

The Trust undertakes to include information about the current equality legislative framework in its corporate induction training for all staff.

## 6. DEFINITIONS

This Policy uses broadly similar definitions to those set out in the current legislative framework for equality issues. However, it is not possible to use one set of definitions that exactly duplicate the current legislation, as the relevant Acts of Parliament vary from each other in their definitions and application.

### Direct Discrimination

Direct discrimination occurs when an individual is treated less favourably than another is, or would be, on the grounds of any of the circumstances given in Section 3, Paragraph 2 (above).

#### Indirect Discrimination

Indirect discrimination occurs when a provision, criterion or practice is applied universally, but its practical effect disproportionately disadvantages one specific group.

#### Harassment

Harassment is behaviour that is uninvited, unwanted and fails to respect the individual.

Examples of such behaviour and a more comprehensive definition of harassment can be found in the Trust's Policy and Procedure on Dealing with Harassment in the workplace.

## **7. POLICY FRAMEWORK & SUPPORT**

Whilst this Policy sets out the key aims and principles to be adopted, the Trust has developed a number of other policies in support of the achievement of an organisational culture free from unfair bias, discrimination and harassment.

However, these are not listed individually as the Trust recognises that all of its functions, policies, procedures, protocols, and guidelines to some extent influence and are influenced by the Trust's equality aims and principles.

## **8. MONITORING**

By collecting and analysing information on the diversity of staff and patients, the Trust can ensure that it provides a workplace that is both fair and inclusive, and that it provides hospital services that are appropriate to the communities it serves.

In the employment context, the Trust will progress its arrangements to monitor staff, job applicants and employment processes by racial group and disability status, and wherever possible by other relevant group membership.

Monitoring and analysis of employment information will be carried out and will be co-ordinated by the Human Resources Directorate to ensure that the Trust's obligations are being met and to assist in the identification of training needs. As a minimum this will be collected on a quarterly basis, and will be reported to the **Equality and Diversity Strategy Group**.

This information will be published in an annual report and made available to the Trust Board on a regular basis. Information will also be published on the Trust's intranet and internet sites where appropriate.

The Trust will also arrange to monitor staff attitudes concerning equality and diversity issues on an annual basis via the Staff Attitude Survey.

In the context of service delivery, the Trust will progress its arrangements to monitor the impact of the services it provides and policies it has adopted (or is proposing to adopt) on race equality, in line with its obligation under the Race Relations (Amendment) Act 2000. This will involve looking at effectiveness and accessibility,

amongst other things. In addition, the Trust will introduce monitoring of services and policies with reference to other groups whenever relevant and possible.

Monitoring will take place of the number of incidents (e.g. of complaints, grievances etc) where equality and diversity issues are relevant to the incident. Relevant issues of disproportionality will also be monitored. This information will be provided to the Equal Opportunities Strategy Group to consider with a view to advising on future policy direction.

The Trust will continue to work towards more comprehensive monitoring and the regular provision of information concerning monitoring.

The results of the monitoring process and the Staff Attitude Survey, as well as legislative requirements, will dictate what action points are to be included in any relevant equality and diversity action plans.

## **9. ADVICE AND COMPLAINTS**

All staff and patients/visitors who feel they have been subjected to discrimination or harassment have the right to seek redress.

Complaints from staff should be submitted in accordance with the Grievance Procedure or the Trust Policy on Dealing with Harassment. It is recognised that employees may find it difficult to approach their immediate line manager in cases of discrimination or harassment, and advice may therefore be sought from the appropriate Human Resources Advisor [or a Harassment Advisor].

Members of Trade Unions/Professional Associations may also wish to seek advice/support from their local representative.

Patients/visitors who feel they have been subjected to discrimination or harassment should use either the Patient Advice and Liaison Service (PALS) or the Trust's complaints procedure.

## **10. TRADE UNIONS/PROFESSIONAL ASSOCIATIONS**

The Trust recognises that staff organisations have a valuable contribution to make, and will therefore continue to work in partnership with them to achieve high standards of equality and diversity.

## **11. POLICY REVIEW**

This Policy will be reviewed within three years (or sooner where necessary) to ensure it remains in line with current legislation and the Trust's organisational principles.

## **12. HUMAN RIGHTS STATEMENT**

### **12.1 POLICY STATEMENT**

This Statement sets out the policy commitment on human rights for the Barnsley Hospital NHS Foundation Trust (the Trust). The Trust is committed to upholding all fundamental human rights and supports the United Nations Universal Declaration of Human Rights (UNUDHR) and the International Labour Organisation (ILO) Core Conventions. The Human Rights Act 1998

(The Act) came into force in October 2000 and affects acts or decisions of public authorities made on or after 2 October 2000. The Act enables people to enforce the European Convention on Human Rights – which Britain has been a co-signatory to since 1947 – in the UK courts.

This Policy gives a brief statement of the Trust's commitment to respecting the human rights of its clients, staff and stakeholders.

The Trust is committed to respecting the human rights of its staff, stakeholders and the patients and service users to whom it provides a service. It will develop policies and practice that at all times take account of the need to protect and develop human rights.

In summary, the Trust will:-

- Treat all patients, service users, their carers, partners and relatives, employees and other individuals that we deal with fairly, openly and honestly.
- Strive to stop all forms of discrimination and harassment.
- Provide a healthy, clean and safe environment for patients, service users, their carers, partners and relatives, employees and other individuals that we deal with.
- Work towards employee diversity in departments and sections of the Trust
- Ensure that employees are fairly remunerated.
- Communicate clearly with employees, respect and support their right to join a trade union.
- Recognise and support the need for a good work-life balance.
- Provide direction and training to enable staff and volunteers to carry out their duties with due regard to human rights.
- Have a set of clear values that support the delivery of this policy

The Trust will monitor and review the commitments set out in this policy. This policy has been written in partnership by Management and Staff side and in consultation with the Equality and Diversity Steering Group.

## **12.2 PURPOSE**

The purpose of this policy is to set out the fundamental principles on Human Rights, which the Trust will support and be guided by in the conduct of its business.

## **12.3 DEFINITIONS**

Human rights are described as being “inherent, inalienable and universal”. They are:-

*Inherent* – because they are acquired by the individuals simply by reason of birth

*Inalienable* – because the rights cannot be taken away

*Universal* – because they apply to all persons regardless of nationality, status, sex or race.

Some rights provided by the Act are “absolute” whilst others are “qualified”

An *absolute* right exists without any limitations or exceptions unless those exceptions are expressly provided for in the Act/Convention itself.

A *qualified* right is one that exists in certain “qualified circumstances” which in simple terms means that the limitations and restrictions imposed are justified as being “necessary” in a democratic society.

A summary of the main rights under the Act is given in Appendix 1.

## **12.4 SCOPE**

This policy applies to all Trust employees and volunteers. Furthermore the Trust will seek to deal with business partners who also observe the provisions of the UNUDHR and ILO Core Conventions.

Non-compliance with this policy by staff may lead to action being taken, which for Trust employees (both staff and managers) may include formal disciplinary action.

## **12.5 ACCESS TO POLICY**

All employees can access this policy which is located on the Trust’s intranet. Copies are also available from the Human Resources Department. Employee’s can seek guidance from line management, their Trade Union representative or the Human Resources Department.

The policy is also available on the trust website for all employees and members of the public.

## **12.6 ROLES AND RESPONSIBILITIES**

The Trust Board has overall responsibility for ensuring that human rights consideration are integral to the way the Trust manages existing services and develops new opportunities and for promoting continuous improvement in the Trust’s performance.

Managers at all levels of the Trust are responsible for providing clear and visible leadership that promotes human rights as integral to the way the Trust delivers care and manages our staff.

All staff and volunteers are responsible for operating to the highest standard of professional and personal integrity and for ensuring day to day actions and behaviours respect and protect the human rights of patients, service users, their carers and families and of those with whom they work.

## **12.7 POLICIES AND PROCEDURES**

All policies that are developed or reviewed by the Trust will be considered in the light of human rights guidance, to see whether particular practice could breach human rights or whether changes could strengthen and foster human

rights. The Trust's Equality Impact assessment procedure also further supports the Trust to meet our commitments

Where the position is unclear (e.g. where the rights of different client groups seem to conflict, or where it is acknowledged that rights may be breached but there would appear to be justification for such a breach) expert advice, including legal advice if necessary, will be sought.

Existing policies will be kept under review to ensure that legal developments, particularly new court judgments that have a bearing upon the interpretation of human rights, are as necessary reflected in changes and innovations in practice within the Trust.

## **12.8 MONITORING AND AUDIT**

The framework for monitoring and audit within the Trust will reflect concerns for and vigilance about the observance of human rights. Human rights will be reflected in the design of audits to enable the observance of human rights to be audited where appropriate.

## **12.9 TRAINING**

It is important that staff are trained to be aware of the specific requirements of the Human Rights Act, and the general need to respect human rights. Human rights will therefore be reflected where it is appropriate to do so in general training within the Trust e.g. human rights issues may feature in training around the Mental Health Act or Consent to Treatment.

Human Rights also feature in the Trust's Corporate Curriculum programme and as part of equality and diversity training.

## **12.10 RAISING CONCERNS**

Although the rights embodied in the Human Rights Act may seem simple and straightforward, in practice the position may be more complex. For one thing as far as UK Law is concerned it is only as particular issues come to court that there is any clarity about the interpretation of the law and therefore of whether something is or is not to be regarded as a 'right'. It is accepted that rights can be conflicting e.g. the right to liberty may conflict with someone else's right to safety. These cases often need to be interpreted and decided upon.

For these reasons the Trust is committed to fostering a culture where patients or their advocates can approach any member of staff and raise a concern about their human rights. Whatever their concern is, they have a right for it to be considered and discussed with them and resolved where possible. This may be done on the spot to the senior member of staff available. Alternatively, contact may be made with the Trust's Patient Advice and Liaison Service (PALS) by phoning Freephone number 0800 028 3382, or by contacting the Trust's Complaints Manager.

Staff with similar concerns also have a right to approach their line manager, Human Resources Directorate, or staff side representative and be met with the same consideration. Any employee who suspects infringements of the policy has the right to inform the Trust without fear of persecution. The Trust will investigate any allegations of infringements of the Human Rights Policy using

the Disciplinary Procedures. Serious breaches by employees will be considered gross misconduct, and may lead to summary dismissal.

Where the issue remains complex and difficult to decide on staff should seek further guidance from their Senior Managers who will, if necessary, seek legal advice.

### **12.11 HUMAN RIGHTS DEFICITS**

A commitment by the Trust to working with staff, patients and others who are involved with the Trust to respect and foster human rights will not of itself ensure that human rights are always met. It is reasonable to foresee instances where a right is identified but cannot be met because of existing resource constraints or because of existing legal constraints (i.e. the requirement to adhere to primary legislation). Resource constraints may require Government action to resolve, as will legal obstacles. The result of this is that at any one time, the Trust may have known areas where it is working towards human rights that it cannot currently fulfill.

### **12.12 REPORT TO THE TRUST BOARD**

The Trust will carry out an annual review of compliance with the Human Rights Act across the organisation charting areas of:-

- Good performance
- Poor performance and possible risk of legal action for breach of Human Rights
- Known areas of deficit and certain risk under the Act

An action plan will be drawn up to address areas of concern.

The Report of the review and action plan will be presented to the Trust Board annually.

### **12.12 POLICY REVIEW**

This policy will be subject to an annual review or amended in light of new employment legislation.

### **12.13 ASSOCIATED DOCUMENTS/RESOURCES** – this list is not exhaustive

- Race Equality Scheme
- Gender Equality Scheme
- Disability Equality Scheme
- Policy on Challenging Bullying and Harassment in the Workplace
- Disciplinary and Grievance Procedures
- Whistle blowing Policy

Further information about the Human Rights Act are available at [www.equalityhumanrights.gov.uk](http://www.equalityhumanrights.gov.uk)

## **ANNEX A** **EQUALITY LEGISLATION**

### **Current “equality” legislation**

- **The Gender Recognition Act 2004**

The purpose of this Act is to provide transsexual people with legal recognition in their acquired gender. Legal recognition will follow from the issue of a full gender recognition certificate by a Gender Recognition Panel. In practical terms, legal recognition will have the effect that, for example, a male-to-female transsexual person will be legally recognised as a woman in English Law. On the issue of a full gender recognition certificate, the person will be entitled to a new birth certificate reflecting the acquired gender and will be able to marry someone of the opposite gender to his or her acquired gender.

- **The Civil Partnership Act 2004**

This Act creates a new legal relationship of civil partnership, which two people of the same-sex can form by signing a registration document. It also provides same-sex couples who form a civil partnership with parity of treatment in a wide range of legal matters with those opposite-sex couples who enter into a civil marriage.

- **Employment Equality (Religion or Belief) Regulations 2003**

These regulations outlaw discrimination (direct discrimination, indirect discrimination, harassment and victimisation) in employment and vocational training on the grounds of religion or belief. The regulations apply to discrimination on grounds of religion, religious belief or similar philosophical belief.

- **Employment Equality (Sexual Orientation) Regulations 2003**

These regulations outlaw discrimination (direct discrimination, indirect discrimination, harassment and victimisation) in employment and vocational training on the grounds of sexual orientation. The regulations apply to discrimination on grounds of orientation towards persons of the same sex (lesbians and gay men) and the same and opposite sex (bisexuals).

- **Sex Discrimination (Gender Reassignment) Regulations 1999**

These regulations are a measure to prevent discrimination against transsexual people on the grounds of sex in pay and treatment in employment and vocational training. They effectively insert into the Sex Discrimination Act

a provision to extend the Act, insofar as it refers to employment and vocational training, to include discrimination on gender reassignment ground.

- **The Human Rights Act 1998**

The Human Rights Act came fully into force on 2 October 2000. It gives further effect in the UK to rights contained in the European Convention of Human Rights. The Act :

- makes it unlawful for a public authority to breach Convention rights, unless an Act of Parliament meant it could not have acted differently;
- means that cases can be dealt with in a UK court or tribunal; and
- says that all UK legislation must be given a meaning that fits with the Convention rights, if that is possible.

- **The Disability Discrimination Act 1995**

This Act prohibits discrimination against disabled people in the areas of employment, the provision of goods, facilities, services and premises, and education; and provides for regulations to improve access to public transport to be made.

- **The Race Relations Act 1976 (as amended by the Race Relations (Amendment) Act 2000)**

The Race Relations Act (RRA) makes it unlawful to treat a person less favourably than another on racial grounds. These cover grounds of race, colour, nationality (including citizenship), and national or ethnic origin.

The Race Relations (Amendment) Act outlawed discrimination (direct and indirect) and victimisation in all public authority functions not previously covered by the RRA, with only limited exceptions. It also placed a general duty on specified public authorities to promote race equality and good race relations. There are also specific duties for listed organisations including the production of Race Equality Schemes.

- **The Sex Discrimination Act (as amended) 1975**

This Act (which applies to women and men of any age, including children) prohibits sex discrimination against individuals in the areas of employment, education, and in the provision of goods, facilities and services and in the disposal or management of premises.

- **The Equal Pay Act (as amended) 1970**

This Act gives an individual a right to the same contractual pay and benefits as a person of the opposite sex in the same employment, where the man and the woman are doing : like work; or work related as equivalent under an analytical job evaluation study; or work that is proved to be of equal value.

- **Disability Discrimination Act 2005**

This Act makes substantial amendments to the Disability Discrimination Act 1995 (see above). The 2005 Act places a general duty on public authorities to promote disability equality and to have due regard to eliminate unlawful discrimination. Those listed bodies within the public.

Sector will also be subject to a specific duty of the 2005 Act. The specific duty provides a clear framework for meeting the general duty and includes the requirement to produce a Disability Equality Scheme. The Disability Equality Duty for the Public Sector will come into force in December 2006.

- **The Equality Act 2006**

The Equality Act include :

- the creation of the Commission for Equality and Human Rights (CEHR) which would give individuals suffering from discrimination easier access to support and provide employers and service providers with improved advice and information in a one-stop-shop. The purpose and functions of the CEHR will be defined in the Bill;

### **Religion and Belief 2004**

- to make unlawful discrimination on the grounds religion or belief in the provision of goods, facilities and services, education, the use and disposal of premises, and the exercise of public functions.

### **Gender 2006**

- To create a duty on public authorities to promote equality of opportunity between women and men ('the gender duty'), and prohibit sex discrimination in the exercise of public functions. This will also include a specific duty on public bodies to produce a Gender Equality Scheme.