

Policy Group: Mental Health Law
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Human Rights, Equality, Diversity and Inclusion Policy

1. Policy Summary

This Policy provides a framework for the Charity to promote human rights, equality, diversity and inclusion for the people it provides services to, their families and the people it employs.

The Charity is fully committed to proactively promoting diversity, equality of opportunity and human rights for all and to creating a culture of inclusivity for the people who provide our services (employees) and the people who use our services.

This Policy outlines how the Charity will ensure its employment policies and practices, and the services it provides meet the requirements of the Equality Act 2010. Whilst the policy is not driven solely by legislation, it recognises the importance of ensuring that the Charity can meet its statutory duties and treat people fairly. This legislation is underpinned by human rights as set out in the Human Rights Act 1998 (HRA 1998).

Human rights are the basic rights and freedoms that every person has. They provide a set of minimum standards, outlined in laws such as the HRA 1998, for how public authorities should treat people. The HRA 1998 guarantees these minimum standards in two ways. Firstly, it places a duty on public authorities (which includes mental health services) to uphold these minimum standards by respecting people's human rights in everything that they do. Human rights laws provides a foundation for all other law, including mental health law. This means that all laws must be 'human rights compliant' and made and applied in a way that respects, protects and fulfils people's human rights.

The purpose of this policy is to:

- Uphold Human Rights. A set of basic rights and freedoms that we all have because we are human. These rights apply to everyone; we are born with them, and although they can sometimes be limited or restricted, they cannot be taken away. Human Rights are based on the idea that no government is above the law, and even governments need a set of rules. In this way human rights act as a set of minimum standards that outline how the government should treat us. In effect human rights provide a basic safety net for everyone.
- Create a working environment free of bullying, harassment, victimisation and unlawful discrimination, Promote equality of opportunity; and
- Promote good relations and positive attitudes between people of diverse backgrounds and foster a culture of respect and understanding between people of diverse cultures, backgrounds,



circumstances and identities in employment policies and practices, in services, and in engagement with partners.

- Develop an organisational culture which embraces an inclusive approach for the people the Charity provides services to and employs.

2. Links to Other Procedures

Policies and procedures available via the Policy A-Z:

[Policies - Policies - A-Z \(sharepoint.com\)](#)

Employees

If any employee feels (or groups of employees collectively feel) they are being subjected to bullying or harassment, or have been discriminated against, they should follow either the [Grievance Policy](#) or the complaints procedure as defined in the [Bullying and Harassment Procedure](#). It is the intention of the Charity that individuals who raise concerns under either of these policies get the matter rectified as soon as possible. If an employee feels they are unable to discuss their concerns with their Line Manager, then HR is available to all staff for advice and guidance. The Charity aims to ensure that staff feel comfortable about raising such complaints. No individual will be penalised for raising complaints unless the substance of the complaint is untrue or the complaint is made in bad faith, for example out of malice. Deliberately false allegations may themselves lead to disciplinary investigation. Where an employee is falsely accused of discriminatory conduct they may subsequently initiate the grievance policy.

St Andrew's Healthcare is recognised as an equal opportunities employer and is Disability Confident employer and a signatory of the Mindful Employer Charter. The [Recruitment and Selection Guidance](#) seeks to ensure all recruitment practices, promotion, succession planning, career development and acting up arrangements are free from direct and indirect, perceived or associative discrimination.

People who use our services

From a patient perspective [Diversity and Inclusion Policy](#) should be read alongside the [Bullying and Harassment Procedure](#).

Whilst the Diversity and Inclusion is a policy that contains principles that underpin all other policies within St Andrew's Healthcare, key policies that support its implementation include:

- [Disciplinary Procedure](#)
- [Freedom to Speak Up and Whistleblowing Procedure](#)
- [Induction Procedure](#)
- [Confidentiality Procedure](#)
- [Police Liaison and Prosecution Policy](#)

- BSL Interpreters Guidelines
- [Safeguarding Vulnerable Adults and Children Policy](#)
- [Grievance Procedure](#)
- [Bullying and Harassment Procedure](#)

3. Rights, Expectations & Scope

This policy applies to all employees, visitors, clients, suppliers, customers or service users irrespective of race, nationality, ethnicity, sexual orientation, religion, faith or belief, disability, age, gender, gender identity/expression, marital or civil partnership status, parental status, proposed or actual gender reassignment, pregnancy and maternity, socio-economic status, HIV status, political affiliation, professional association, trade union membership or any other category (known as 'protected characteristics') where discrimination cannot be reasonably justified.

Everyone has the right to be treated equally, fairly and with dignity and respect at all times, in providing and using our services. No patient or other person using our services, no employee whether full or part-time, day night or Work Choice member, temporary, seasonal, a job applicant (both internal and external), contractor, volunteer or other stakeholder is to be subject to discrimination or subject others to discrimination and it is expected that all of the above will adhere to this policy.

By being inclusive, no individual should be treated disproportionately by reason of their ethnic origin, disability, gender identity/expression, proposed or actual gender reassignment, sexual orientation, age, religious belief, marital status or caring responsibilities. Every individual within the Charity will be expected to consistently demonstrate their personal commitment to, and responsibility for, contributing to the creation of an inclusive and diverse culture and to challenging behaviours that are unacceptable.

4. Protected Characteristics

The Charity aims to ensure that no job applicants, employees or service users receive less favourable treatment on any grounds that cannot be shown to be justified. The Equality Act of 2010 provides protection for the following characteristics as defined by the Act:

1. Age
It can refer to a person belonging to a particular age or range of ages.
2. Disability
A person has a disability if s/he has a physical or mental impairment which has a substantial and long-term adverse effect on that person's ability to carry out normal day-to-day activities.
3. Gender reassignment

The process of transitioning from one gender to another.

4. Marriage and Civil Partnership

Entitlement to marry is available to those who are

- a. 16 or over;
- b. free to marry or form a civil partnership (single, divorced or widowed);
and
- c. not closely related

Same-sex couples can also have their relationships legally recognised as civil partnership and within England, Scotland and Wales marriage of same-sex couples has been legal since 2014. Civil partners must be treated the same as married couples on a wide range of legal matters.

5. Pregnancy and Maternity

Pregnancy is the condition of being pregnant - expecting a baby. Maternity refers to the period after the birth, and is linked to maternity leave in the employment context. In the non-work context, protection against maternity discrimination is for 26 weeks after giving birth, and this includes treating a woman unfavorably because she is breastfeeding

6. Race

Refers to the protected characteristic of Race. It refers to a group of people defined by their race, colour, and nationality (including citizenship) ethnic or national origins.

7. Religion and Belief

Religion has the meaning usually given to it but belief includes religious and philosophical beliefs including lack of belief or a belief that there is no god (Atheism). Generally, a belief should affect your life choices or the way you live for it to be included in the definition.

8. Sex

A man or a woman.

9. Sexual orientation

Whether a person's sexual attraction is towards their own sex, the opposite sex or to both sexes.

5. Prohibited Acts

The Equality Act 2010 prevents protects people with a protected characteristic from a number of prohibited acts:

i. Discrimination

Discrimination can take different forms. Definitions of discrimination include:



- a. Treating a person worse than someone else because of a protected characteristic (known as direct discrimination). Although in the case of pregnancy and maternity direct discrimination, this can occur if they have protected characteristic without needing to compare treatment to someone else.
 - b. Putting in place a rule or way of doing things that has a worse impact on someone with a protected characteristic than someone without one, when this cannot be objectively justified (known as indirect discrimination)
 - c. Treating a disabled person unfavourably because of something connected with their disability when this cannot be justified (known as discrimination arising from disability)
 - d. Failing to make reasonable adjustments for disabled people.
- ii. Indirect Discrimination
Indirect discrimination occurs when an organisation's practices, policies or procedures have the effect of disadvantaging people who share certain protected characteristics. Indirect discrimination may not be unlawful if an employer can show that there is an 'objective justification' for it. This involves demonstrating a 'proportionate means of achieving a legitimate aim'.
 - iii. Harassment
Unwanted conduct which has the purpose or effect of violating someone's dignity or which is hostile, degrading, humiliating or offensive to someone with a protected characteristic or in a way that is sexual in nature.
 - iv. Victimisation
Treating someone unfavourably because they have taken (or might be taking) action under the Equality Act or supporting somebody who is doing so.
 - v. Discrimination by Association
Occurs where a person does not have a protected characteristic themselves, but have experienced discrimination because they are associated with someone who has a protected characteristic. This includes the parent of a disabled child or adult or someone else who is caring for a disabled person.

6. Aims

The Charity aims to:

- Incorporate equality, diversity and human rights principles from the start in all its policies, plans and strategies;

- Undertake equality analysis to assess the impact of policies and services and to determine the needs of its employees, patients / service users and the public;
- Reflect the diversity of the geographical areas it serves in publications, events and other marketing and communications activities;
- Seek to address all forms of discrimination, and to deal with such incidents with due seriousness;
- Follow the social model as a minimum approach to disability;

In addition, the Charity aims to do the following in relation to the services it provides for people:

- Provide appropriate, accessible and effective services and facilities to all sections of its communities without discrimination or prejudice;
- Provide clear information about its services in appropriate formats or languages which meet people's needs;
- Monitor its services to ensure that all sections of the community are receiving fair outcomes and take action to address any inequalities that are apparent;
- Respond promptly and fairly to any complaints received about its services including those relating to discrimination.

Lastly, the Charity aims to do the following in relation to people it employs:

- Ensure that its employment Policies and Procedures do not discriminate directly or indirectly or stigmatise against any group or individual on unjustifiable grounds;
- Recognise and value the experience that having direct experience of disability / mental health needs has in our organisation;
- Develop the profile of its workforce to reflect that of the local population;
- Monitor the employment processes, training and development opportunities and disciplinary procedures by age group, disability, gender and ethnic group and take action to address any inequalities that are apparent;
- Promote a culture of fairness and respect in its employment

Policies, Procedures and Practices;

- Provide appropriate training at every level for employees on equality, diversity and human rights issues;
- Take seriously complaints of bullying, harassment, victimisation and unlawful discrimination investigate concerns that are made;
- Respond to the particular needs of employees relating to protected characteristics as defined under the Equality Act 2010

7. Human Rights

Human rights are protected by international laws and are legally enforceable against public authorities in the UK under the HRA 1998. This includes St Andrew's Healthcare because it provides mental health care services to people on behalf of the National Health Service.

St Andrew's Healthcare is legally required to respect the rights of service users in everything that we do, and in some cases we must take positive action to protect rights when they are known to be at risk.

Most rights in the HRA can be restricted in certain circumstances. A public authority can restrict rights if they have a legitimate aim. Examples might be if an individual is at risk or the individual is a risk to others in the community.

If an individual's rights are restricted then any restriction needs to be proportionate. This means that the restriction must have a legitimate aim and it must be least possible restriction in the circumstances.

The HRA 1998 sets out the following rights that are protected.

Article 2:	Right to life
Article 3:	Right not to be tortured or treated in an inhuman or degrading way
Article 4:	Right to be free from slavery or forced labour
Article 5:	Right to liberty
Article 6:	Right to a fair trial
Article 7:	Right not to be punished for something which wasn't against the law at the time
Article 8:	Right to respect for private and family life, home and correspondence
Article 9:	Right to freedom of thought, conscience and religion;
Article 10:	Right to freedom of expression
Article 11:	Right to freedom of assembly and association
Article 12:	Right to marry and found a family
Article 14:	Right not be discriminated against in relation to any of the rights contained in the Human Rights Act
Article 1, Protocol 1:	Right to peaceful enjoyment of possessions
Article 2, Protocol 1:	Right to education
Article 3, Protocol 1:	Right to free elections

Article 1, Protocol 13: Abolition of the death penalty

St Andrew's Healthcare staff need to think about the people who they are providing care to and that the decisions and actions they take could breach the human rights of these people.

8. Absolute rights, non-absolute rights and balancing rights

Some human rights are absolute. This means they cannot be restricted under any circumstances or for any reason. For a decision, policy or action to breach an absolute right it must have a serious impact on a service user. The right to be free from inhuman and degrading treatment is an absolute right.

Other rights are non-absolute and can sometimes be restricted without being considered a breach of the HRA. The right to liberty is sometimes called a limited right because it can only be restricted in very specific situations. For example, being detained on mental health grounds is a lawful interference with a person's right to liberty; as long as it is done in accordance with mental health law and is proportionate. Other rights like respect for private and family life, are sometimes called "qualified rights", which means they can be restricted provided the following tests are met:

- Is the restriction lawful? This means there must be a law which allows the restriction. For example, in mental health situations, is the restriction allowed under the Mental Capacity Act (MCA) or the Mental Health Act (MHA)?
- Is this restriction for a legitimate reason? These are set out in the right, and include reasons such as the need to protect you or others, to consider the rights of others or the wider interests of the community, such as national security or resources
- Is the restriction necessary? This means it must be proportionate. A balancing act needs to be carefully carried out; public authorities must be able to show that they have taken your rights into account, and that the restriction is as minimal as possible to achieve a legitimate aim.

9. Monitoring and Oversight

The purpose of equality audit and monitoring is to ensure that policies and practice are free from discrimination and that there is equality of opportunity for all.

All employees and job applicants will be asked to complete equal opportunities monitoring either at recruitment or via SAP Self Service, disclosing their sensitive details such as gender, ethnicity, age, faith and belief, sexual orientation, gender identity and any disabilities that they may have.

The information provided will be collated and stored in accordance with legislation and St Andrew's Healthcare Data Protection Confidentiality Procedure and will be used to enable the charity to understand the diversity mix of its workforce, to monitor the effectiveness of this and associated policies, to enable equality analyses to be conducted and to support planning of services and monitoring of practices. It will only

be viewed in an anonymised state and by individuals with a genuine need.

To enable the above and in accordance with Care Quality Commission (CQC) and legislative requirements (such as the Equality Act 2010), the following audit and monitoring activities will be conducted at least annually:

- Equality analysis (on all new and revised policies)
- Equal pay audit
- Employee diversity monitoring and reporting by protected characteristics of:
 - Current workforce
 - Specific groups such as volunteers, Workchoice and night staff (ad hoc)
 - HR discipline, grievance and sickness absence cases; access to training;
 - Internal appointments/promotions
 - The recruitment process at application, short list and appointment stages Reasons for selection and rejection of candidates at each stage of the selection process will be recorded, e.g. initial short-listing and final decisions. Information on the reasons for rejection of candidates will be shared on request with unsuccessful candidates.

St Andrew's Healthcare will demonstrate its commitment to fairness and equality by ensuring:

- Audit and monitoring activities are transparent and available to all
- Pay structures are published
- Pay rates and salary ranges are included in all internal and external job advertisements

Where there are any anomalies identified, these will be looked at closely with a view to developing action plans and measures to rectify any issues including positive action to address existing imbalances where necessary.

10. Diversity and Inclusion

St Andrew's Healthcare is committed to *Inclusive Healthcare*. This means providing patient outcomes and employment opportunities that embrace diversity and promote equality of opportunity, and not tolerating discrimination for any reason

Our goal is to ensure that *Inclusive Healthcare* is reinforced by our values, and is embedded in our day-to-day working practices. All of our policies and procedures are analysed in line with these principles to ensure fairness and consistency for all those who use them. If you have any questions on inclusion and diversity please email the inclusion team at DiversityAndInclusion@standrew.co.uk.

The Charity strives to ensure equality of opportunity for all, both as a major employer and a major provider of health care. This [Diversity & Inclusion Policy](#) is currently going through equality analysis to ensure fairness and consistency for all those covered by

it, regardless of their individual difference. The results of this analysis will be included with the policy once this task has been completed.

11. Training

St Andrew's Healthcare will ensure that it will not discriminate in the provision of training courses as follows:

- All training courses, procedures, materials, criteria and attendance will be regularly reviewed, monitored and analysed to ensure they are free from bias and discriminatory content.
- Diversity and Inclusion principles will permeate all training courses and materials.
- Opportunities for training and development will be communicated to and made available to all relevant members of staff.
- All training requests will be based on defined organisational and/or individual development need and in accordance with the Charity's Individual Performance & Development Review (IPDR) process.
- A range of training events which support the implementation and importance of Diversity & Inclusion are provided throughout the Charity, including induction for all new employees, mandatory refresher training for all existing employees, Dignity at Work training, Managing Discrimination toolkit and Managing Diverse Teams training for line managers. Every individual within the Charity will therefore have a clear understanding of:
 - Their personal responsibility for contributing to the creation of a culture of inclusivity, acceptance and respect for everyone's human rights
 - Their responsibilities in line with the core competence framework to treat others with dignity and respect at all times
 - Their responsibilities to challenge behaviours that are unacceptable
 - The procedures and support mechanisms in place to report and deal with instances of bullying and harassment
 - Descriptors and information relating to all sessions can be found within the Learning and Development Prospectus
 - Attendance is recorded on each individual employee's personal learning account via the HR Training Database.

12. References to Legislation and Best Practice

Legislation

- i. Equality Act: <https://www.legislation.gov.uk/ukpga/2010/15/contents>
- ii. Human Right Act 1998:
<https://www.legislation.gov.uk/ukpga/1998/42/contents>

Guidance and Best Practice

- iii. CQC, Our human rights approach for how we regulate health and social care services: February 2019:
https://www.cqc.org.uk/sites/default/files/20200922_Our_human_rights_approach_post_consultation_document_FINAL_WEB_accessible.pdf

- iv. Equality Act 2010 Statutory Code of Practice Employment
www.equalityhumanrights.com
- v. Equality and Human Rights in the Essential Standards of Quality and Safety:
<https://www.equalityhumanrights.com/en/file/6411/download?token=gqbsCETb>
- vi. Mental Health, Mental Capacity and Human Rights: A practitioner's guide:
<https://www.bih.org.uk/Handlers/Download.ashx?IDMF=e68acfdde793-44b2-9771-743b9bf5e0b2>
- vii. Human Rights: Human Lives Equality and Human Rights Commission: A Guide to the Human Rights Act for Public Authorities:
https://www.equalityhumanrights.com/sites/default/files/human_rights_human_lives_a_guide_for_public_authorities.pdf
- viii. The Essential Guide to the Public Sector Equality Duty England (and Non-Devolved Public Authorities in Scotland and Wales)
https://www.equalityhumanrights.com/sites/default/files/psed_essential_guide_-_guidance_for_english_public_bodies.pdf
- ix. Equality Act 2010 Technical Guidance on the Public Sector Equality Duty: England
https://www.equalityhumanrights.com/sites/default/files/technical_guidance_on_the_psed_england.pdf
- x. Equality Act 2010 Code of Practice 3 Employment Statutory Code of Practice
<https://www.equalityhumanrights.com/sites/default/files/employercode.pdf>
- xi. EHRC, Equality Act 2010 Code of Practice Services, public functions and associations Statutory Code of Practice:
https://www.equalityhumanrights.com/sites/default/files/servicescode_0.pdf
- xii. EHRC, Equality Act 2010 Code of Practice Equal Pay Statutory Code of Practice:
<https://www.equalityhumanrights.com/sites/default/files/equalpaycode.pdf>
- xiii. UN Conventions on human rights

13. How to request a Change or exception to this policy

Please refer to either the [Policy and Procedure Update Application Link](#)
Or the exception process [Policy and Procedure Exception Application Link](#)

14. Key changes - please state key changes from the previous version of the policy

Version Number	Date	Revisions from previous issue
1	Feb 22	Newly published policy