



Equality Statement, Outcomes and Guidance

The watercolour "The Jury" on the cover of this document was produced by Stewart Goodall and was part of an exhibition of artwork held in partnership between Garvald (Edinburgh) and the Scottish Court Service (SCS) in November 2010.

The partnership was established in 2009 as part of our aim to make a positive impact on the communities in which we operate. We are a key player in the justice system but as a major public organisation we also seek to make a wider contribution to Scottish society both corporately and through the individual activities of our staff.

Garvald (Edinburgh) provides a wide range of activities to over 100 adults with special needs through its main workshop premises in Edinburgh. Garvald seeks to foster and develop each person's individual gifts and talents to enable them to contribute uniquely and creatively to the Garvald community and wider society.

Scottish Court Service

Equality Statement

The Scottish Court Service (SCS) will contribute to promoting equality in Scottish society by:

- Mainstreaming equality and diversity in the SCS.
- Promoting equality of opportunity.
- Providing responsive and accessible services for all court users which recognise their diverse needs.
- Ensuring that our workforce reflects the diversity of Scotland's population and is supported by excellent employment practices.
- Challenging and eliminating discrimination, victimisation and harassment against court users and our workforce.
- Fostering good relations across all protected characteristics.
- Delivering meaningful equality outcomes for court users, for our workforce and for promoting equality.

Equality Outcomes

The SCS aims to achieve the following equality outcomes:

- Our people respond appropriately, knowledgeably and confidently to the needs of colleagues and court users who have protected characteristics.
- Our services are accessible to all court users including those who have protected characteristics.
- People who have protected characteristics feel confident about using SCS services because we have tackled prejudice and promoted understanding of their needs.

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1 Lord President's Foreword

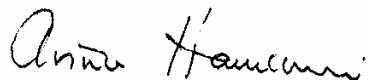
I am pleased to be able to introduce the first Equality Statement, Outcomes and Guidance which sets out how the Scottish Court Service will manage its responsibilities under the Equality Act 2010 to “mainstream equality” and the steps it will take, where appropriate, to exceed those responsibilities.

Every judicial office holder on taking up office is required to take the judicial oath declaring that the judicial office holder will “do right to all manner of people, according to the laws and usages of this realm, without fear or favour affection or ill will”. It is right that this judicial commitment to equality before the law should be matched by an equal commitment by the Scottish Court Service to those same principles for its staff and for those who use its services.

The purpose of the Scottish Court Service is to “Support Justice”. It has a strong, long-standing commitment to ensure equality for court users and staff. This document details how it will build on its existing policies and activities to offer courteous and considerate service and equality of treatment to all parts of the community. In developing its policies and services, the Scottish Court Service will ensure that no one who needs to access its services, in whatever capacity, is subjected to discrimination. This is one way in which the organisation and its staff will help maintain and increase public confidence in the justice system.

The commitments outlined in this document are not without their challenges and it will take leadership and commitment at all levels if they are to be achieved. The Scottish Court Service Board is keen to play its part by monitoring progress and demonstrating personal and collective commitment to ensuring that the objectives in the Equality Statement are met and the Equality Outcomes are achieved.

I look forward to reporting on progress as the Scottish Court Service develops and delivers its equality commitments in the coming years.

A handwritten signature in black ink, appearing to read 'Andrew Hamilton'.

The Rt. Hon. Lord Hamilton

2 Chief Executive's Foreword

This is our first Equality Statement and Guidance which aims to strengthen our commitment to mainstream equality and diversity in the Scottish Court Service (SCS) and to comply with the Equality Act 2010.

Within this document we outline our current work and future actions and commitments in respect of the protected characteristics, and confirm our commitment to treat those not covered by the legislation with courtesy and consideration.

We will undertake a range of activities specifically to promote equality and monitor our record in ensuring that our employment practices and service delivery comply with the general and specific equality duties. Where we can, we will try to exceed the minimum requirements and develop a culture where equality and diversity are "mainstreamed" in the way we do our business.

People coming to court or making applications to the Office of the Public Guardian need to have confidence in our services, whatever their background or their needs. Through national court user surveys and local feedback processes, we want to understand the needs of all court users so that we can identify and target the areas in which we can improve our services.

We want to attract people from all sections of the community to our organisation and retain them in our employment. We want a diverse and well motivated workforce and an environment in which all our staff are treated with dignity and respect.

As a service provider, we want our buildings and our services to be as accessible to people as we can make them. However, we have some significant challenges to adapt our historic estate, and we will work with individuals and representative organisations to make appropriate adaptations where possible.

In support of this document we have an action plan to achieve; equality in our services, equality in our employment opportunities, and the fulfilment of our duty to promote equality. We have made good progress in recent years but we know that there is still more that we can and must do to meet our goals and to promote equality.

I welcome your comments on the Scottish Court Service's Equality Statement and Guidance and your views on how we can continue to improve our approach.



Eleanor Emberson, Chief Executive Officer

3 Purpose of the Statement and Guidance

The purpose of this statement and guidance is to demonstrate to our staff, court users, and the general public, how we will progress and develop the work we have undertaken on equalities so far and how we will respond to the requirements of the Equality Act 2010.

In developing our policies we will have due regard to the need to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between people who share a relevant protected characteristic¹ and people who do not share it; and
- foster good relations between people who share a relevant protected characteristic and people who do not share it.

We are committed to meeting the requirements of the Equality Act. We aim to go beyond the statutory requirements and promote a culture where equality is integral to our service.

4 About the Scottish Court Service

The SCS is a non-ministerial public body, established by the Judiciary and Courts (Scotland) Act 2008 to provide administrative support to the Scottish courts and judiciary and to the Office of the Public Guardian (OPG). We deliver operational support to the High Court and Court of Session and to sheriff courts and justice of the peace courts in over 70 locations across Scotland. The Office of the Public Guardian provides guidance and supervision and undertakes investigations to protect the interests of vulnerable people under the terms of the Adults with Incapacity (Scotland) Act 2000.

The SCS is led by a Board chaired by the Lord President, Scotland's most senior judge, with members drawn from judicial and legal backgrounds and from outwith the justice system. The Board sets the strategic direction for the SCS and monitors performance and progress towards the delivery of the strategic priorities that it sets.

We currently employ approximately 1500 staff throughout Scotland.

¹ "protected characteristics" are defined in Appendix 1

We have a People Strategy and corporate values that set the direction for managing people within the SCS. Related policies include our Equal Opportunities Policy and Dignity at Work Policy which set out how our staff are entitled to be treated and our expectations about how they should treat others whilst at work.

4.1 Purpose and Values

Our Purpose

The purpose of the Scottish Court Service (SCS) is **Supporting Justice**.

We deliver this by providing the people, buildings and services needed for the work of Scotland's courts; members of the judiciary and the Office of the Public Guardian and Accountant of Court (OPG).

In delivering our purpose we must take account of the needs of the judiciary; of those people involved in the proceedings of the courts; and of the wider public. In fulfilling our purpose we aim to promote public confidence in Scotland's justice system and the efficient administration of justice.

Our vision is to build a stronger SCS and we aim to ensure:

- skilled, engaged and motivated staff in our courts, OPG and corporate headquarters;
- a well managed estate that makes best use of our buildings and meets our environmental responsibilities;
- clear and efficient business processes that respond to the needs of the judiciary, court users and the wider public;
- effective technology that supports our key processes and communications; and
- appropriate collaboration with other justice organisations, to help drive improvement across the justice system as a whole.

Our Values

In delivering our purpose and progressing our vision we will demonstrate the following values:

- commitment and professionalism;
- providing a high quality service;
- integrity and impartiality;
- working to improve the justice system; and
- using resources effectively.

Our values are underpinned by a number of specific behaviours. Of particular relevance to this Statement and Guidance is the value of “integrity and impartiality” which encourages staff to treat everyone with courtesy, consideration, dignity and respect.

5 Our Approach to Equality and Diversity

The SCS Board and senior management are committed to mainstreaming equality and diversity and creating an organisation that recognises the diverse needs of its staff and service users and promotes equality.

To support this commitment, we aim to gather a wide range of viewpoints from people with different experiences in order to improve our services and promote equality. We believe that gathering feedback from a mix of people with different skills and from diverse cultures and backgrounds will support that aim and will enable us to anticipate, and be more responsive to, the diverse needs of court users.

We will promote a positive attitude to equality and diversity and address and eliminate harassment, victimisation and discrimination in staff management, in our relationships with other justice system organisations and in our service provision to court users.

We aim to play an integral part in promoting equality in Scottish society by providing services which are high quality, continuously improving, efficient and responsive to people’s needs.

We will take active steps to ensure that discrimination is not occurring by:

- establishing policies (e.g. Equal Opportunities and Dignity at Work) to ensure equality of access to our services by court users from all groups in society;
- communicating our policies to our staff to ensure that they know that it is unlawful to discriminate when they are providing services;
- training our staff to understand the policies, the meaning of equality and their legal obligations;
- monitoring the implementation and effectiveness of our policies;
- addressing acts of discrimination by staff as part of our rules and procedures;
- ensuring that performance management systems address equality and non-discrimination;
- maintaining an easy to use, well publicised complaints procedure;
- reviewing practices to ensure that they do not unjustifiably disadvantage particular groups; and

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- consulting court users, staff and organisations representing groups who share protected characteristics about the quality and equality of our services and how they could be made more inclusive.

We will continue to review our practice and consult court users and our staff about the effectiveness of these policies.

We will not tolerate direct discrimination, indirect discrimination, harassment or victimisation.

In providing our services we will not discriminate against people with protected characteristics by:

- refusing to provide them with a service;
- withdrawing a service from them that is still provided to other court users or members of staff;
- providing them with a service of a lesser quality or in an inferior way than we would usually provide the service;
- allowing anyone who works for us or takes action on our behalf to harass court users;
- victimising anyone who works for us or takes action on our behalf who makes a complaint about discrimination; or
- failing to make reasonable adjustments for people with disabilities to enable them to use the services that we provide.

This statement, the equality outcomes and guidance are consistent with our purpose and values and demonstrate our commitment to:

- eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010;
- advance equality of opportunity between people who share a relevant protected characteristic and people who do not share it; and
- foster good relations between people who share relevant protected characteristics and people who do not share them.

This Equality Statement, Outcomes and Guidance replaces our existing race, disability and gender equality schemes, and provides the guiding principles for delivering services in a way that promotes equality and recognises the diversity of our employees, court users and other people with whom we come into contact.

6 Equalities Impact Assessments

We strive to ensure that our decisions and activities promote the needs of people with protected characteristics and that we do not deliberately or unwittingly discriminate against any group or individual.

Our main way of ensuring that we do not unwittingly or deliberately show bias or discrimination is our equalities impact assessment process and tool which we apply to policies and activities which affect people.

Impact assessments are a necessary part of our planning, risk assessment and project management practices. We have introduced an equalities impact assessment tool to allow policies and activities to be assessed, reviewed and amended in the light of any evidence of the potential for bias or discrimination towards any individual or group.

We will make our completed impact assessments available as evidence of our progress towards mainstreaming equality.

7 Monitoring and Reviewing

We will provide information about how we discharge our responsibilities in respect of this guidance in terms of employment, service delivery and positive promotion. The specific steps to gather this information are detailed in our action plan and information will be published on our website www.scotcourts.gov.uk

The action plan also sets out areas that we will improve in the quality of consultation, involvement, information gathering and how the information gathered is used. We will analyse this information to assess any differences which are highlighted, investigate the reasons for them and, if necessary, implement remedial actions.

We will review this guidance and report on the outcomes and the action plan annually, mentioning specific outcomes which we aim to achieve, the steps that we are taking to achieve those outcomes, and indicators of progress towards them.

We have established an independent Equalities Advisory Group (EAG) which is a voluntary group of independent equality and diversity experts. The EAG will provide advice and insight on both general and specific equalities issues.

8 Complaints and Communications

Our complaints procedure is a key component of our approach to equality. It is available on the SCS website at [You and Us - Feedback / Complaints](#) and is available in all SCS premises. We welcome feedback from court users about our services and how we can improve.

Our Dignity at Work policy sets out how we will manage concerns raised by staff and court users about unacceptable behaviour in the workplace. Our internal Grievance policy exists for staff to raise complaints/concerns about specific work related issues.

We aim to provide straightforward access to our complaints procedures and provide clear information about our equalities policies and commitments. We will:

- publicise our equality policies;
- tell court users what equality standards they can expect;
- promote a culture of courtesy and consideration in the way we deliver our services;
- tell court users what to do if they have a concern or complaint, including clearly telling them who to contact; and
- manage and respond to complaints promptly and within clear timescales.

We have systems in place to regularly review our policies, practices and staff behaviours. We will monitor suggestions, complaints and feedback to identify any patterns in the information received, and we will resolve problem areas or share good practice quickly.

We will raise the awareness of protected characteristics amongst our staff so that they can recognise equality problems and manage them promptly.

We are committed to generating confidence amongst communities and court users by acting on feedback, eliminating discriminatory practice or behaviour, and promoting equality and awareness of the needs of people with protected characteristics.

9 Alternative Formats

This Statement and Guidance is published on our website. It is also available in alternative languages, formats such as “easy read”, large print, Braille and digital audio format on request.

10 Enquiries

Enquiries about this Statement, Outcomes and Guidance or any equality and diversity issues in the SCS should be directed to:

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Edinburgh
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E-mail: equalities@scotcourts.gov.uk

Equality Guidance – Introduction to Appendices

The appendices offer guidance for the reference of Scottish Court Service staff, court users and anyone who otherwise comes into contact with the SCS. The guidance supplements the commitments and principles in the Equality Statement.

The guidance sets out our interpretation of the relevant statutory provisions in the Equality Act 2010; how we might respond to specific circumstances or situations; and how we mean to give effect to the equality and diversity commitments and principles set out in the Equality Statement.

APPENDIX 1 Protected Characteristics

Protected characteristics are defined as:

- Disability
- Race
- Sex
- Pregnancy and maternity (which encompasses breastfeeding)
- Gender reassignment
- Religion or belief
- Sexual orientation
- Age
- Marriage or civil partnership (but only in employment practice, not service delivery)

We will not discriminate against any person who has one of the protected characteristics, any combination of protected characteristics or anyone who has an association with any person who has one of the protected characteristics or any combination of them.

Disability

We will not discriminate against any person who has a disability. We will make reasonable adjustments for anyone who has a disability. We will promote the SCS as an employer of people with disabilities.

We encourage all staff and court users to tell us if they have a disability so that we can provide the support that is required.

A person has a disability if they have:

- a physical and/or mental impairment; and
- the impairment has a substantial and long-term adverse effect on their ability to carry out normal day-to-day activities.

Physical impairment includes conditions that affect the body such as: arthritis, hearing or sight impairment, diabetes, asthma, epilepsy, conditions such as HIV,

cancer and multiple sclerosis, as well as severe disfigurement and loss of limbs or the use of limbs.

Mental impairment includes conditions such as autism and learning disabilities such as those caused by Down's syndrome and mental health conditions such as depression and schizophrenia.

The following factors also need to be present for somebody to be considered as having a disability.

- It must be long-term which means that it has lasted or will last 12 months or more, or for the rest of a person's life. If the person no longer has the condition but still experiences discrimination because of it, they may still be treated as if they had a disability.
- The effect of the impairment makes it more difficult and/or time-consuming for a person to carry out an activity compared to someone who does not have the impairment, and this causes more than minor or trivial inconvenience.
- The activities that are made more difficult are normal day-to-day activities at work or at home.

The impact of these factors needs to be assessed without taking into account the effect of any medication the person is taking or any aids, such as sound enhancement, special software on their computer, or assistance or adaptations that the person has such as a wheelchair, walking aid, or assistance dog.

There is a specific provision that allows a person with a disability to receive different treatment than a person without a disability in the same situation. This is not considered as discriminatory against the person without a disability.

Race

We will not discriminate against a person because of their race.

Race includes either singularly or in combination a person's:

- colour;
- nationality (including citizenship); or
- ethnic or national origin (including gypsy travellers).

Sex

We will not discriminate against a person because of their sex.

We will not discriminate against men or women and we will not treat any man or woman any more or less favourably because of their sex.

Pregnancy, maternity and breastfeeding

We will not discriminate against a woman who is pregnant, has recently given birth or is breastfeeding.

The specific characteristics which are considered as protected are:

- pregnancy at any stage;
- a maternity period of 26 weeks following birth; and
- breastfeeding a baby or child up to two years old.

We will not treat a pregnant woman or a new mother less favourably than we would treat anybody else.

The SCS will make appropriate provision for a mother who is breast-feeding to do so on our premises and we will not let it affect the standard of service the mother receives.

Gender reassignment

We will not discriminate against anyone undergoing gender reassignment.

Gender reassignment is a personal process, rather than a medical process, which involves a person expressing their gender in a way that differs from the physical sex they were born with.

This personal process may include undergoing medical procedures or it may simply be choosing to dress in a different way as part of the personal process of change. A person will be protected because of gender reassignment in the following circumstances:

- the person makes their intention known to someone, no matter who, and then either:
 - proposes to undergo gender reassignment even if they take no further steps; or
 - has not reached an irrevocable decision that they will undergo gender reassignment but there is a manifestation of this intention;
- the person starts or continues to dress, behave or live full-time or part-time according to the gender they identify with as a person;
- the person has undergone treatment related to gender reassignment such as surgery or hormone therapy; and
- the person has received gender recognition under the Gender Recognition Act 2004.

Any of these circumstances either individually or combined can be present for a person to be considered as having the protected characteristic.

We will treat personal information about this protected characteristic particularly carefully because of the extreme sensitivity and the distress that can be caused by the unmanaged disclosure of personal information about gender reassignment

Religion or Belief

We will not discriminate against any person because of their religion or belief.

This commitment applies to people who have any religion and any religious or philosophical belief. It also applies to people who do not have any religion and any religious or philosophical belief.

A religion need not be well known to be a protected characteristic. However, it must be identifiable and have a clear structure and belief system. Denominations or sects within religions may also be considered a religion. Cults and new religious movements may also be religions.

Religious belief is more widely defined than simply adherence to a religion or its central articles of faith and may vary from person to person within the same religion. A belief which is not a religious belief may be a philosophical belief. A

belief need not include faith or worship of a god or gods, but must affect how a person lives their life or perceives the world.

For a belief to be a protected characteristic it must be:

- genuinely held;
- a belief and not an opinion or viewpoint based on information available at the moment;
- a belief as to a weighty and substantial aspect of human life and behaviour;
- capable of attaining a certain level of cogency, seriousness, cohesion and importance;
- worthy of respect in a democratic society; and
- compatible with human dignity and must not conflict with the fundamental rights of others.

Particular features of a religion or a belief might include, for example:

- treating certain days as days for worship or rest;
- following a dress code;
- following a particular diet; and
- carrying out or avoiding certain practices.

Direct or indirect discrimination may be based on the features of a religion or a belief. For example, if the SCS has a way of doing things that disadvantages a court user or employee because of a feature of their religion or belief this might amount to indirect discrimination.

Sexual orientation

We will not discriminate against any person because of their sexual orientation.

Sexual orientation is the attraction a person feels towards one sex or both, and determines with whom they form intimate relationships.

We will not discriminate against:

- people who are attracted to those of the same sex (homosexual - lesbian or gay women and gay men);
- people who are attracted to people of both sexes (bisexual); or

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- people who are attracted to the opposite sex (heterosexual or straight people).

We will not treat any person more or less favourably because:

- of their sexual orientation, whether they are lesbian, gay, bisexual or straight; or
- they are opposite sex partners or because they are same sex partners.

Sexual orientation discrimination also covers discrimination connected with expressions of a person's sexual orientation which may include their appearance, the places they visit or the people they associate with.

Age

We will not discriminate against any person because of their age.

We will extend the protection in the Equality Act to all age groups including children and young people.

Marriage or civil partnership

In addition to our responsibilities as an employer, we will provide the same services and standards to people who are married or civil partners.

APPENDIX 2 Discrimination

Discrimination can take a number of forms:

- direct;
- combined;
- indirect;
- discrimination arising from disability;
- discrimination because of their association with someone who has a protected characteristic;
- discrimination because they are thought to have a protected characteristic, whether correctly or incorrectly ('perception'); and
- failure to make reasonable adjustments for people with disabilities.

For all these forms of discrimination a limited number of exceptions apply and these are set out in appendix 5.

We will not discriminate deliberately or unjustifiably.

A person is also protected from:

- harassment related to a protected characteristic; and
- victimisation because they have made a complaint about discrimination (this protection also extends to a person who is helping someone else make a complaint and to a person who is perceived as making a complaint).

A protected characteristic must be part of the reason for the discrimination but not necessarily the only reason.

Not knowing about a protected characteristic is not a reasonable excuse for discrimination.

Direct discrimination

Direct discrimination means treating someone who has a protected characteristic less favourably than someone who has not.

Direct discrimination can occur where two or more people share the same protected characteristic and one of those people is responsible for the discrimination.

We will not tolerate direct discrimination.

It is not direct discrimination against a person without any disability to treat a person with a disability differently in order to ensure they have equality of opportunity.

It is not direct discrimination against a man to offer a woman specific treatment due to pregnancy or maternity.

Combined discrimination

A person may experience less favourable treatment than someone else because of a combination of the protected characteristics they have.

We will not treat any person less favourably because they have a combination of two or more protected characteristics.

Combined discrimination is similar to direct discrimination, but it concerns a person's treatment because of a combination of two characteristics. Evidence of discrimination because of a second characteristic can be used to prove discrimination overall if there is not enough evidence to show that a person was discriminated against because of one characteristic on its own.

If a person has more than one disability, this can only be one of the characteristics within the definition of combined discrimination.

Indirect discrimination

Indirect discrimination occurs where a provision, criterion or practice:

- that disadvantages a person with a particular protected characteristic is applied to everyone;
- generally disadvantages those who share a protected characteristic and it cannot be justified; and
- deters a person from using a service or applying for a job because it would be applied to them.

We will not tolerate indirect discrimination.

To avoid indirect discrimination any rule or way of doing things must be a balanced way of achieving our purpose.

In determining that balance, cost alone does not provide a justification for providing services to those who have protected characteristics less favourably but it forms part of a wider set of circumstances which justify less favourable treatment.

Discrimination arising from disability

Discrimination arising from disability is different from “direct discrimination”, defined above. For discrimination arising from disability, the reason for the treatment does not matter.

We will not treat people with disabilities less favourably because of their disability.

Discrimination arising from disability can only be applied to people with disabilities or people presumed to be disabled.

For discrimination arising from disability to occur, a person with a disability must have been put at a disadvantage. If the disadvantage is obvious, it will be clear that the treatment has been unfavourable. For example, a person with a disability who is refused access to a service, or given a service on worse terms, may have been treated unfavourably even if the service provider thinks they are acting in the person’s best interests.

Even if the reason for less favourable treatment is legitimate, the means of achieving it must be proportionate. There must be a balance between protecting against organisational liability or risk to the individual and providing access to our services for people with disabilities.

Perception and Association

Discrimination by perception is where a person is treated less favourably because they are perceived to have one or more protected characteristics. This applies whether the perception is true or not.

Discrimination by association takes place where a person is treated less favourably because they associate with a person with a protected characteristic.

We will not discriminate against any person because of a protected characteristic even if the person does not have the characteristic.

Duty to make reasonable adjustments for people with disabilities

We will make reasonable adjustments to avoid people with disabilities being substantially disadvantaged in accessing services.

We may need to change the way in which a service is provided including the removal of physical barriers. This is the 'duty to make reasonable adjustments'. It may involve treating people with disabilities differently to people without disabilities.

The duty may require us to:

- change the way things are done;
- provide extra aids and services like special computer software or a different service; and,
- make changes to overcome barriers created by the physical features of premises.

The duty to make reasonable adjustments aims to tackle obstacles that can prevent people with disabilities from accessing services. We have a duty to take positive and pro-active steps to remove or prevent these obstacles.

What is considered reasonable changes over time as expectations about service provision and accessibility increase. We will work with representatives from disability groups and our Equalities Advisory Group to ensure that we have appropriate advice and are making the appropriate adjustments to our services and access to them.

When deciding whether a change is reasonable we will consider:

- how effective the change will be in assisting people with disabilities or a specific service user;
- practicality;

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- cost;
- resources and scale; and
- any safety issues.

The issues of scale, cost, practicality and safety do not alone justify failing to make reasonable adjustments and we are committed to ensuring that they are not used as an excuse for inactivity. We will work with representatives from disability groups to ensure that any adjustments we do make are proportionate to our size, our national reach and our resources and they deliver effective access to our buildings and services.

APPENDIX 3 Harassment related to Protected Characteristics

Harassment is display of unwanted behaviour which has the purpose or effect of:

- violating the dignity of another person; or
- creating for that person an intimidating, hostile, degrading, humiliating or offensive environment.

Unwanted behaviour can include any kind of behaviour, including spoken or written words or abuse, imagery, graffiti, physical gestures, facial expressions, mimicry, jokes, pranks, acts affecting a person's surroundings or other physical behaviour.

We will not tolerate any member of SCS staff or any court user being subjected to harassment.

Even if the person who is subject to unwanted behaviour due to a protected characteristic does not have that protected characteristic, the behaviour could still be harassment.

The unwanted behaviour does not have to be specifically aimed at the person who finds it violates their dignity or creates for them an intimidating, hostile, degrading, humiliating or offensive environment.

APPENDIX 4 Victimisation under the Equality Act

A person is protected by the provisions of the Equality Act if they are:

- bringing proceedings under the Act;
- giving evidence or information in connection with proceedings brought under the Act;
- doing anything which is related to the provisions of the Act; or
- making an allegation that another person has breached the Act (whether or not the allegation is later dropped).

We will not tolerate victimisation of any member of SCS staff or any court user.

A person does not need to have a protected characteristic in order to be protected against victimisation under the Act, but victimisation is only unlawful if it is linked to a protected characteristic.

If someone makes a complaint or gives information knowing it to be false, then any disciplinary or legal action which is taken against the complainant for making such a complaint will not be victimisation and the complaint will be treated as malicious.

We will ensure that:

- any acts of retaliation or intimidation by a staff member against a complainant or anyone supporting them will be treated as a disciplinary matter;
- if a staff member sees or hears someone being victimised they know the appropriate procedures to follow, so steps can be taken to prevent it happening again;
- information is available for court users so that they know how to complain if they think they have been subjected to victimisation; and
- staff or court users who make a complaint, or assist in an investigation, will be protected from victimisation.

APPENDIX 5 Exceptions to the general rule

There are some exceptions to the general requirement not to treat any person less favourably than someone else because of a protected characteristic.

These exceptions normally require an evaluation to determine whether an exception might apply. We will use our equality impact assessment process and tool to undertake such evaluations.

Exceptions will not be used in ways that discharge our wider equalities commitments even if they allow us to comply with legislation.

If an exception is justified we will keep a detailed record of the circumstances and the decisions that were taken. Exceptions are considered under two general headings, “positive action” and “statutory provisions”, which are further explained in the following sections. However, in addition to the general exceptions there are also some other specific issues in regard to particular protected characteristics as follows.

- Marital or civil partnership status is not a protected characteristic in relation to services or public functions.
- Age is not currently a protected characteristic in relation to services or public functions, although it is expected to become protected from 2012.
- People with some types of protected characteristics are not specifically protected from harassment by the Equality Act in relation to services

We will apply the same standards consistently in regard to all court users and staff irrespective of the protected characteristic they have.

Positive action

People with shared protected characteristics may be socially or economically disadvantaged, or may be affected by the consequences of past or present discrimination or disadvantage. Certain groups may experience institutional or systemic discrimination, high levels of poverty and social exclusion, and/or segregation in housing, education or social welfare.

Positive action measures are steps we will take to tackle inequality by lessening disadvantages experienced by people who share the same protected characteristic.

The positive action measures must be balanced and proportionate. This means that the steps that are taken must tackle inequality whilst minimising the adverse impact on others.

Positive action can take a wide variety of forms including: outreach, encouragement, information campaigns, targeting of services, supplementary education or training of particular groups, improving access to services, and financial support.

Types of activities that could be considered to be positive action are:

- providing services in all court offices such as Language Line (a remote interpretation facility);
- providing a service on an outreach basis to encourage more people to take advantage of a service, for example vulnerable witness remote sites for giving evidence; and
- giving people with particular shared protected characteristics the confidence to participate fully in the justice system.

Exceptions to the commitment to promote positive action exist for judicial decisions or acts.

Statutory provisions

There are limited exceptions for acts which could be considered discriminatory, as detailed below, but which the SCS has to comply with to meet the requirements of another law, whether that law existed when the Equality Act 2010 was passed or whether the law is passed at a future date.

This exception only applies where the only options are to either discriminate or break the other law.

This exception applies to all the protected characteristics, unless reserved legislation on nationality or residency takes precedence.

Services generally provided only for people who share a protected characteristic

A service provider is allowed to supply their service in a way that means it is generally used by people who share a particular protected characteristic.

If it is not practical to provide the service to someone who does not share that particular characteristic, a service provider can refuse to provide it to that person.

National security

There is a general authorisation in the law which allows for anything to be done which is proportionate in order to safeguard national security, even if it would otherwise be discrimination because of a protected characteristic.

Disability

It is not discrimination against a person with no disability to treat a person with a disability more favourably or to make reasonable adjustments.

Gender reassignment

If a service involves providing separate services for men and women or services only for men or women then we will, treat a court user differently because of their gender reassignment.

Sex, including pregnancy and maternity

Separate services for men and women can be provided where a combined service would not be as effective.

Different treatment is also allowed if it is required to support women who are pregnant or have recently given birth, or to guard against risks specific to women.

It is not discrimination against any person to make special provision for a pregnant woman or a woman who has recently given birth, in order to avoid treating her less favourably.