



**Isle of Man
Government**

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Isle of Man Government

Promoting Equal Opportunities
Employee Handbook

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IOM Government

Policy to Promote Equal Opportunities

The Isle of Man Government is committed, both as an employer and as a provider of services, to promoting equal opportunities and fairness at work for all, subject to any statutory obligations which impact on employment.

To achieve its objective it will ensure that equal opportunity principles are applied in all its personnel policies and procedures particularly those relating to recruitment, training and development and career progression.

No employee should be subjected to discriminatory treatment on the grounds of, marital status, age, sex and sexual orientation, marriage and civil partnership, race, Pregnancy and maternity, disability, religion or belief; or be disadvantaged by conditions or requirements which cannot be shown to be justified for sound operational reasons.

Selection procedures for vacant posts will be monitored and reviewed to ensure that all posts are recruited on the basis of merit and ability and free from bias.

An employee who believes that they have grounds for complaint will be encouraged to raise this through the grievance procedures set out in their terms and conditions of service. All complaints will be dealt with promptly and in confidence, subject to the need to thoroughly investigate any alleged breaches of the policy and to take appropriate action.

All employees, without exception, are expected to observe the requirements of equal opportunities legislation and adhere to the principles of equal opportunity as set out in this policy at all times.

Any breach of the policy is potentially misconduct and any major breach may be treated as potential gross misconduct. Complaints regarding breaches will be dealt with confidentially and as quickly as possible under the relevant disciplinary procedures.

Isle of Man Equal Opportunities Legislation

The Policy on Equal Opportunities at the beginning of this handbook is a general policy to promote fairness at work. Current IoM Legislation relating to the Policy is set out below.

The main items of employment legislation dealing with discrimination on Island are:

Employment Act 2006
Rehabilitation of Offenders Act 2001
Equality Act 2017

Employment Act 2006

The Employment Act 2006 replaced the Employment Act 1991 and the Employment (Amendment) Act 1996. It provides protection against discrimination in respect of:

- Dismissal on the grounds of pregnancy, race or religion, and sexual orientation
- Discrimination on the grounds of trade union membership (or non-membership)
- Protection against unfair dismissal and against action being taken against an employee short of dismissal (for example, withholding opportunities for transfer, training and promotion); and
- Protection against discrimination at the recruitment stage.

It also provides protection against unfavourable treatment in instances where the individual has or is in the process of blowing the whistle.

Rehabilitation of Offenders Act 2001

The Rehabilitation of Offenders Act 2001 provides for certain criminal convictions to be considered spent for the purposes of employment (e.g. recruitment, promotion). Failure to disclose a spent conviction by an applicant is not a proper ground for an employer to prejudice that person in any way in any occupation or employment.

Equality Act 2017

The Isle of Man Equality Act 2017 seeks to provide a unified legal framework to protect individuals from discrimination both in the workplace and the provision of goods and services. It deals with discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Once fully implemented it will replace several Acts including

- Breastfeeding Act 2011

- Disability Discrimination Act 2006
- Race Relations Act 2004
- Employment (Sex Discrimination) Act 2000

The Act is being introduced in two phases. The first phase will implement protections for all types of protected characteristic other than age and disability from 1st January 2019. Age and disability will be protected with effect from 1st January 2020.

Equal Opportunities

Unfair Treatment - Confidential Support & Guidance

One of the measures put in place for promoting equal opportunities and fairness at work for all is a network of Contact Officers established across the public service. Each government Department, Office and Board has employees who are designated as Contact Officers to assist in cases of alleged unfair treatment or unlawful discrimination, including harassment and bullying.

They have undertaken formal training for the role which is to provide confidential guidance and support, independently of the line management structure to anyone who believes that they are being treated unfairly in some way. As Contact Officers they will not make judgements or investigate complaints.

Contact Officers will provide support to:-

- Employees who believe that they are being treated unfairly;
- Employees against whom allegations of unfair treatment etc have been made.

However, the same Contact Officer will not support both the complainant and the alleged offender.

The Contact Officer network aims to provide a confidential and informal avenue to enable employees to talk through what has happened, decide what if anything, they wish to do about it and generally help to deal with the situation. The main role of the Contact Officer is to empower employees to identify steps to stop unfair treatment, discrimination, bullying or harassment. Contact Officers will facilitate decision-making by the individual and may provide support in any action taken to resolve complaints. It is however important to distinguish between the support offered by a contact officer, and representation, which is the proper role of a trade union/staff association official.

The core functions of the CO can be described as being:

- To listen to what has happened
- To provide initial support and encouragement to the individual
- To draw the individual's attention to whatever further formal or informal course of action is available to them, and to explain what is meant by informal and formal action
- If the individual wishes, to draw the problem to the attention of line managers, senior managers or other key organisational personnel
- If the individual wishes, to assist her or him in taking formal action. ***NOTE this does not include the Contact Officer acting as a "friend" in formal***

disciplinary, grievance or capability procedures. Individuals who act as Contact Officers may undertake this role if they so wish but it would be as a work colleague, trade union/staff association representative (if they are one) etc, it is not part of the duties of a Contact Officer.

If you believe that you are being treated unfairly at work (this may be by a colleague, subordinate or manager), you can approach any of the people listed as contact officers. You are not obliged to seek help from the contact officers in your own Department/Office/Board. Making use of the contact officer network is entirely voluntary. Alternative sources of help and support are available from your union/staff association, Office of Human Resources, including the Staff Welfare Service.

A list of contact officers can be found on the Government Intranet under "Equal Opportunities".

Contact Officers - Confidentiality

Any enquiries or requests for assistance from Contact Officers will be treated as strictly confidential.

However, there are circumstances in which disclosure may be made which are set out below.

- **With the client's consent**

Before any disclosure the Contact Officer and Client should agree:-

- (a) to whom the disclosure is to be made;
- (b) the extent of the disclosure (precisely what will be revealed);
- (c) the purpose for disclosure;
- (d) the method of disclosure;
- (e) any safeguards to prevent it extending beyond the agreed limits.

- **By order of a court trying a civil dispute**

- **By order of a court in criminal procedures**

- **By order of a tribunal holding power to compel the giving of evidence.**

This applies to Employment Tribunals, who may order disclosures if they form the opinion it will be in the interests of justice to do so. It is for the judge or chair of a tribunal to determine what has passed in confidence with a client. Confidence should not be broken simply because the advocate or organisation thinks that an order will be made. It is entirely appropriate to wait until the order is made. This principle also applies to any written or recorded material gathered or held.

- **Under statutory powers compelling disclosure in the course of investigations by official agencies.**

For example a health and safety investigation into an accident at work where emotional stress caused by sexual harassment could have played a part, can disclose under Section 20 of the Health & Safety at Work Act 1974 (as applied to the Isle of Man) confidential material and/or evidence of confidential conversation(s) between contact officer and client.

- **Where public interest justifies the Contact Officer volunteering disclosure even though the client refuses consent and there is no court order or statutory compulsion.**

For example if a contact officer becomes aware that the client may do considerable harm to themselves or others.

Equal Opportunities – Further sources of Advice

Further advice on equal opportunities is available from:-

- **Senior Manager** - appointed within each organisation who has responsibility for equal opportunity issues. The prime role of this manager is to:-
 - monitor equal opportunities;
 - ensure that any issues are dealt with promptly in accordance with procedures and good practice; and
 - provide advice to managers.

The post holder would not normally be involved in advising employees (except as the employee's line manager). Advice on individual cases is available from line managers or contact officers.

- **Trade Union Representatives** - are available to provide advice and assistance to members of the trade union/ staff association.
- **HR Staff**- further information and advice can be obtained from the Employee Relations Advisers on the staff of the Office of Human Resources, or from departmental HR staff.

Discrimination

Discrimination is defined by law as being direct or indirect.

Direct discrimination

Direct discrimination refers to a situation in which a person is treated less favourably, in employment, because of a protected characteristic.

Areas where this could occur include:

- Recruitment
- Selection
- Promotion
- Re-deployment
- Transfers
- Training
- Dismissal

Examples of direct discrimination include:

If the protected characteristic is race, less favourable treatment includes segregating an individual from others.

If the protected characteristic is sex — (a) less favourable treatment of a woman includes less favourable treatment of her because she is breast-feeding; (b) in a case where B is a man, no account is to be taken of special treatment afforded to a woman in connection with pregnancy or childbirth.

Indirect discrimination

Indirect discrimination occurs when a person (A) discriminates against another (B) if A applies to B a provision, criterion or practice which is discriminatory in relation to a relevant protected characteristic of B's.

Examples of Indirect Discrimination

Indirect Sex Discrimination: The application of an unjustifiable requirement or condition which precludes considerably more of one gender than the other from employment. For example selection criteria, which are not relevant to the job. The requirements set out in the person specification must be relevant to the duties of the post, requirements such as unnecessary qualifications or

unnecessarily long periods of experience may well be discriminatory and must be avoided

Indirect Marital Discrimination: Advertising a post stating an unnecessary requirement to work unsocial hours. The proportion of married men/women who can comply will be less than the proportion of single men/women.

The IoM Government Policy statement on Equal Opportunities makes it clear that direct and indirect discrimination on the grounds of age, disability, gender reassignment, marriage and civil partnership, race, religion or belief, sex or sexual orientation must be avoided.

Victimisation

Victimisation occurs when B is treated less favourably than others by A because they are believed to have done, or may do, a protected Act.

Protected Acts include:

- Bringing proceedings under the Equality Act
- Giving evidence or information in connection with proceedings under the Equality Act;
- Doing any other thing for the purposes of or in connection with the Act;
- Making an allegation (whether or not express) that A or another person has contravened the Act.

Examples

- Transfers to another area.
- Allocate particular duties no one else wants to do.
- Verbal harassment.
- Poor staff appraisal.

Positive Action

Positive Action can be taken where it is believed that persons who share a protected characteristic suffer a disadvantage connected to the characteristic, or have needs that are different from a person who does not share it. It can also apply where participation in an activity by persons who share a protected characteristic is disproportionately low.

Examples of Positive Action

- Targeting members of one sex by advertising in specialist papers.
- Encouraging job applicants from one sex – for example, the “welcome” messages which sometimes appear in job adverts like “*applications are particularly welcomed from...*” This does not preclude people from the opposite sex applying and there must be no discrimination at the point of selection.
- Organising an open day for people from a particular ethnic background if they are underrepresented in the employer’s workforce.

Positive Action is permitted by the Equality Act 2017._

However, the selection process must not be discriminatory. The post must be open to all candidates who meet the person specification and the successful applicant should be the best candidate based on that specification, subject to the provisions of the Control of Employment Legislation in respect of the appointment of “IoM Workers”.

Positive Discrimination

Positive discrimination occurs when some applicants or employees receive preferential or more favourable treatment than others to meet quotas, targets or to improve the representation of their gender or ethnic group in the workplace. It is unlawful irrespective of whether it is unintentional or done with the best intentions.

Examples of Positive Discrimination include:

- **Positive Sex Discrimination:** Interviewing candidates of only one gender to ensure better representation by that gender in the workforce.
- **Positive Race Discrimination:** Applying less stringent criteria to members of one ethnic group to enable greater recruitment of that group.

Liability

Both employer and employee can be liable for discriminatory acts under Equal Opportunities Legislation and may be ordered by the Employment Tribunal to pay compensation. The employer must be able to demonstrate that its employment policies and practices are applied fairly and effectively throughout the organisation. To avoid liability in individual instances it is essential that information and training on Equal Opportunities is made available to all staff.

Genuine Occupational Qualifications

Some exceptions exist within the Employment (Sex Discrimination) Act 2000 whereby an employer is entitled to specify the sex of the person for a particular job. Jobs or parts of jobs exist where a Genuine Occupational Qualification may be applicable on the grounds of decency, privacy, authenticity or to provide personal services promoting welfare as well as other grounds. If a GOQ is claimed it is good practice for a written statement to be drawn up defining why it is necessary for the particular job. You should contact the HR Advisers for more

Examples

- Recruiting a woman as an attendant for a female sauna.
- Casting a male actor to play Hamlet.
- Hiring women only to work in a refuge for female victims of domestic abuse.

Physical strength or stamina is **not** a Genuine Occupational Qualification and is specifically excluded by the Employment (Sex Discrimination) Act 2000.

Recruitment, Selection and Promotion

The objective of the selection process is to select the most suitable person for the job/post in respect of skills abilities and qualifications, subject to the provisions of the Control of Employment legislation. Selection must be fair, unbiased and objective whether it involves recruitment assessment, internal job selection or promotion.

All criteria, conditions or requirements set must be relevant to the performance of the job.

Further guidance on this subject can be found in the Isle of Man Public Service Equality Diversity and Inclusion Recruitment Principles

Examples of Discriminatory Practices

- Selection criteria which are not relevant to the job. The requirements set out in the person specification must be relevant to the duties of the post, requirements such as unnecessary qualifications or unnecessarily long periods of experience may well be discriminatory and must be avoided.
- Making assumptions about a person holding a protected characteristic's ability to do particular jobs. Physical or other requirements should be identified, checked to ensure that they are wholly relevant and applied to all applicants.
- Offensive, discriminatory, or discouraging questions and remarks. The following questions could amount to direct sex discrimination, particularly if only directed to female applicants.
 - ◇ Do you have any plans to start a family?
 - ◇ Would your husband object to you working shifts?
 - ◇ Might you have to move if your husband changes jobs?
 - ◇ What arrangements will you make for looking after your children when you have to work late?

The questions must be relevant to the job and asked of all applicants e.g.:- "The post does require regular attendance in the evenings and at weekends at short notice to provide essential cover, would you be able to attend in these circumstances".

Training and Development

It is essential that all employees are briefed to develop an awareness of equal opportunity issues as part of their induction immediately after appointment. Managers should ensure that all existing employees are made aware of new equal opportunities legislation and policies. Training, briefing and updates to this handbook will be provided to keep managers and employees informed of new developments.

Further training on equal opportunity issues will be given in the relevant training and development provided to IoM Government employees. In particular, management courses will cover key areas such as recruitment and addressing problems (through discussion and, if required, appropriate use of the discipline, capability and grievance procedures).

Managers and supervisors are responsible for ensuring that all staff receive training in equal opportunities appropriate to the duties of their post and should act as role models for the implementation of the equal opportunities policy.

Learning, Education and Development

LEaD will provide advice and training/development courses to contribute to an awareness of equal opportunities by:-

- Keeping abreast of legislation, policies and good practice.
- Including equal opportunity issues in training needs analyses.
- An ongoing review and development of existing courses.
- Using people who are appropriately experienced to deliver training and development.

Staff Appraisal

It is essential that a fair and unbiased appraisal is given to staff in posts where an appraisal scheme is in operation.

Key principles in achieving fairness are:-

- To discuss and agree the future objectives for the post which will be referred to at the end of the appraisal period.
- To provide regular updates to the employee throughout the reporting period. Any areas of perceived weakness must be brought to the employee's attention as soon as they are identified and appropriate action taken to address the issue. Nothing contained in the report at the end of the period should come as a surprise to the officer.
- The assessment of performance must be based on evidence with specific examples being available to support the assessment. This should be a range of examples over the entire period, not based on a few isolated examples, to provide a balanced assessment.

Even where there is no formal appraisal scheme in place managers and supervisors should adopt the above principles to ensure fairness.

Equal Pay

This relates to equal pay claims where the work of two people, whose work is being compared, is taken to be equal so that an equality clause or equality rule can operate. For work to be equal, a complainant must establish that he or she is doing:

- like work,
 - work rated as equivalent, or
 - work of equal value,
- to a comparator's work.

Advice from OHR should be sought in respect of any such claim received.

Work Life Balance

The Isle of Man Government is committed to improving opportunities for staff to achieve a balance between their work and their responsibilities in their private lives within the limits of current legislation, policy and financial provision. Whilst this will often be of particular importance to those with domestic responsibilities, the opportunities to achieve a work/life balance are open to all staff.

The existing terms and conditions of service for government employees does provide the opportunity for staff to have or request more flexible working arrangements which include:-

- Job sharing
- Part-time working
- Paid and unpaid special leave
- Maternity leave
- Paternity leave
- Flexible working hours

In addition managers will consider any proposals submitted to assist staff in achieving a work life balance whilst maintaining the efficient and effective provision of services.

Managers should look favourably at requests to take up work/life balance options whilst recognising that organisational effectiveness cannot be impaired. In considering requests the question should be "how can we make this work?" rather than "this won't work".

Research has shown that the introduction or extension of opportunities such as those listed above has improved effectiveness, morale, absence rates and retention.

A refusal to grant a request for more flexible working without good operational reasons may also be contrary to equal opportunities legislation. UK case law has a number of examples of successful actions against employers who have refused requests for flexible working.

Procedures for Addressing Equal Opportunity Issues

(Grievance, Discipline and Capability)

Grievance Procedures - for employees to raise matters

The grievance procedures are available to any employees who feel that they have not been treated fairly under the equal opportunities policy. Employees should follow the procedures provided for by the terms and conditions of service under which they are employed (a copy of which is available from their manager).

In general the first stage in the grievance procedure is to seek to resolve the matter by informal discussion. This is normally with the person concerned but, if the employee does not feel able to discuss the matter with this person, they may raise the matter informally with their line manager. If the source of the grievance involves the line manager this informal discussion may be with the line manager's manager.

If the informal discussion does not resolve the grievance to the employee's satisfaction he/she can move to the next stage which usually provides for a written submission with the support of a staff association/trade union representative if the employee so wishes.

NOTES

The above outlines the formal procedures available. Employees should check the procedures in their terms and conditions of service.

In addition general advice and support is available through the Contact Officer network

Discipline and Capability Procedures

All employees are required to observe the rules and standards set by their employer to secure compliance with the provisions of equal opportunities legislation and policy.

Managers and supervisors will use the discipline or the capability procedures as appropriate to investigate any allegations that these rules/standards have not been met and take appropriate action if the allegation is found to be justified.

NOTES

The procedures used will be those applicable to the employee who is alleged to have breached the standards under his/her terms and conditions of service.

Fairness at Work Policy

Fairness at Work is important to the Isle of Man Government as it strives to support its staff and deliver its services to the people of the Island. The Isle of Man Government is

committed to promoting a working climate in which all members of staff are treated fairly and consistently and with dignity and respect.

The broad aims of the Policy are to:

- State the values and principles that underpin Fairness at Work
- Focus on the promotion of positive relationships at work
- Outline appropriate and inappropriate behaviour
- Provide guidance on methods for promoting Fairness at Work
- Encourage early resolution, informally wherever possible
- Set out procedures for dealing with inappropriate or unacceptable behaviour

The Fairness at Work policy can be found at the following link:

<https://www.gov.im/media/1357251/draft-fairness-at-work-policy-procedures-and-guidance.pdf>

Policy Appraisal

Care must be taken to ensure that policies do not discriminate and do not go against any of the Equal Opportunities Legislation or the IOM Government's Policy to Promote Equal Opportunities. It is important to identify in good time any policy, which may in practice affect some people less favourably than others and to consider whether it would therefore be unlawful or unjustifiable. When the possibility of discrimination arises advice should be sought from the senior officer with responsibility for equal opportunities within your Department/Board/Authority/Office.

When formulating or putting a policy into practice the following steps should be taken.

Preliminary Appraisal

For each policy area under consideration, the preliminary appraisal should include the following questions:

- Is there any evidence that the **current** policy, practice or situation leads to different effects:
 - ◇ For men and women?
 - ◇ For married and unmarried people?
 - ◇ For people with and without dependants?
 - ◇ For people of different racial groups?

- ◇ For people of different religious beliefs or political opinions?
 - ◇ For disabled and non-disabled people?
 - ◇ For people of different ages?
 - ◇ For people of different sexual orientation?
- If so, are any of these people affected less favourably?
 - If so, can this be objectively justified?

Policy options should then be prepared which, if appropriate, include proposals to eliminate discrimination, which might include taking positive action to remedy the effects of past discrimination.

New Options

For each **new** policy option, the following questions should be asked, to ascertain whether it gives rise to practices or situations which might constitute direct or indirect discrimination.

Direct Discrimination

- Does any aspect of the proposal refer to men and women separately?
 - o If so, does it treat either less favourably than the other?
 - o If so, is the reason for the less favourable treatment related to gender?
- Does any aspect of the proposal specify different treatment for married people compared with unmarried people?
 - o If so, does it treat either less favourably than the other?
 - o If so, is the reason for the less favourable treatment related to marriage?
- Does any aspect of the proposal refer to different racial, religious or political groups?
 - o If so, does it involve less favourable treatment of members of one racial, religious or political group compared with another?
 - o If so, is the reason for the less favourable treatment related to racial, religious or political grounds?
- Does any aspect of the proposal refer separately to people with and without dependants; to able-bodied and disabled people; or to people of different ages or sexual orientation?
 - o If so, does it treat either less favourably than the other?
 - o If so, is the reason for the less favourable treatment related to one of these factors?

Indirect Discrimination

- Does any aspect of the proposal involve any requirements (e.g. height, age, language, qualification, place of birth, length of residence etc) or contain any conditions that may be more difficult for members of one group to meet than another or that are expected to have a substantially unfavourable impact on one group compared with another?
 - ◇ For women compared to men or vice versa?
 - ◇ For married compared to unmarried people?
 - ◇ For any racial group compared with another?
 - ◇ For people with or without dependants?
 - ◇ For people of different religious beliefs or political opinions?
 - ◇ For disabled people compared with non-disabled people?
 - ◇ For people of different ages?
 - ◇ For people of different sexual orientation?

If the answer to any of these questions is yes, are there important policy issues, which would objectively justify retaining the requirements or conditions?

In writing policy documents, orders, instructions etc care should be taken to ensure exclusionary language is not used.

Final Steps

Consideration should be given to monitoring effects of policy in terms of fair treatment and equal opportunities by carrying out an impact review after implementation.



This document can be provided in large print or as an audio recording on request

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