



**Isle of Man
Government**

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Isle of Man Government

Promoting Equal Opportunities
Employee Handbook

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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 HR 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 age, sex, sexual orientation, marriage or civil partnership, race, pregnancy or maternity, disability, religion or belief and gender reassignment. No employee should 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 or the Fairness at Work Policy. 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 whistleblowing.

Rehabilitation of Offenders Act 2001

The Rehabilitation of Offenders Act 2001 provides for certain criminal convictions to be considered as "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 Equality Act 2017 protects individuals from discrimination, harassment and victimisation in relation to the protected characteristics of age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

The Act has repealed the Race Relations Act 2004 and the Employment (Sex Discrimination) Act 2000 and certain provisions in the Employment Act 2006.

All of the characteristics protected by the Act are in force from 1.1.19 with the exception of age and disability which are in force on 1.1.20.

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 to assist in cases of alleged unfair treatment, unlawful discrimination, harassment and/or 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 Contact Officer are:

- 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
- 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, if the individual wishes.

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 on the Office of Human Resources webpages under [Fairness at Work](#). 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, the Office of Human Resources, including the Staff Welfare Service.

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 the Employment and Equality Tribunal, who may order disclosure if they form the opinion it will be in the interests of justice to do so. It is for the 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 the 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 .

- **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 HR Advisers on the staff of the Office of Human Resources, or from departmental HR staff.

Discrimination

Discrimination can take the following forms:

Direct Discrimination

This type of discrimination refers to a situation in which a person is treated less favourably because of a protected characteristic compared to someone without that characteristic. The person suffering the less favourable treatment does not have to have the characteristic themselves, they may be associated with someone with that characteristic or perceived to have the characteristic.

Direct discrimination can never be justified except in the case of age discrimination which may be objectively justified.

Indirect Discrimination

This type of discrimination arises where a policy, practice, process or decision, which may have been intended to apply to individuals fairly does in fact treat a person with that characteristic less favourably because of a protected characteristic compared to others without that characteristic.

Indirect discrimination may be objectively justified if it can be established that the reason for the discrimination was for a solid business reason or social policy aim, that it was appropriate and necessary and there was no other less discriminatory way of achieving the same outcome.

Discrimination arising from Disability

This type of discrimination occurs when a disabled person can show that they have been treated unfavourably because of something connected to their disability. There is no requirement to compare their treatment to another person.

It may be possible to objectively justify this type of discrimination.

Failure to Make Reasonable Adjustments

There is a responsibility for employers to make adjustments to accommodate the needs of a person with a disability. There is a requirement to understand the barriers that the individual may face and do something to resolve this. The disabled person should be involved in any discussions about adjustments or discussions with the third sector. The resources of the organisation as a whole are considered as to whether it was reasonable to make an adjustment not just the resources of the Division/Department.

This may occur in:

- recruitment;

- selection;
- promotion;
- re-deployment;
- transfers;
- training;
- dismissal.

Harassment

Harassment is behaviour that makes an individual feel distressed or intimidated.

Harassment is a form of discrimination under the Equality Act.

The Act defines harassment as either (i) unwanted conduct related to a protected characteristic or (ii) unwanted conduct of a sexual nature, which has the purpose or effect of violating an individual's dignity or creating an intimidating, hostile, degrading, humiliating or offensive environment for that individual.

Examples include:

- unwanted physical contact
- unwelcome remarks about a person's age, dress, appearance, race or marital status
- jokes at personal expense
- offensive language, gossip, slander, sectarian songs and letters
- posters, graffiti, obscene gestures, flags, bunting and emblems
- coercion for sexual favours
- pressure to participate in political/religious groups
- personal intrusion from pestering, spying and stalking
- personal insults
- unwanted "banter".

An individual does not have to have the protected characteristic themselves to be protected by the Act.

Not all of the protected characteristics are included for harassment. Excluded are marriage and civil partnership and pregnancy and maternity. An individual may alternatively be able to rely on the protected characteristics of sex or sexual orientation.

The Act also protects individuals who are treated less favourably because they have reacted to the harassment suffered, if it relates to sex or gender reassignment.

Victimisation

Victimisation occurs when a person is treated less favourably because they've made or supported a complaint/allegation, raised a grievance or brought proceedings under the Equality Act 2017. A person is also protected if someone believes they have taken action when in fact they haven't.

Positive Action

Positive Action is the term used to describe certain lawful activities that may be taken aimed at reducing the disadvantage or under-representation experienced by those with any of the protected characteristics under the Equality Act.

Positive action aims to address an imbalance in the workplace. Analysis of statistics may reveal that particular groups face disadvantage in accessing or progressing through the organisation. It is often conscious, or more often unconscious, actions or behaviours within an organisation that lead to a disadvantage. Sometimes the only way to correct a historic imbalance is to provide extra help for some groups protected by the Act.

Positive action is about creating opportunities for individuals in order to address an imbalance in the workforce where there is under-representation. Selection of an individual to a position is always to the best candidate, however where there are two candidates of equal merit, the positive action provisions in the Equality Act allow you to select the candidate with the characteristic that is under-represented in the organisation (subject to the provisions of the Control of Employment Legislation).

Examples of Positive Action

- Targeting members of one sex by advertising in specialist papers.
- Encouraging job applicants from a particular characteristic – for example, the “welcome” messages which sometimes appear in job adverts like “*applications are particularly welcomed from females/males/disabled people...*” This does not preclude people from another protected group from applying.
- Organising an open day for people from a particular ethnic background if they are under-represented in the employer’s workforce.

Positive Discrimination

Positive action is lawful but positive discrimination is not. Selecting candidates because of a protected characteristic or having ratios, targets or quotas for a certain characteristic would be positive discrimination.

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.

Genuine Occupational Requirement

Under the Equality Act 2017, if a particular protected characteristic is central to a particular job, this is known as a "genuine occupational requirement". This means that only a person who has that particular protected characteristic is suitable for the job. This must be a consideration before a post is advertised.

There must be a real reason for the genuine occupational requirement and imposing this, is appropriate and fair.

Examples of genuine occupational requirements may include:

- Recruiting a man as an attendant for a male toilet.
- Hiring women only to work in a refuge for female victims of domestic abuse.

Liability

Both employer and employee can be liable for discriminatory acts under the Equality Act and may be ordered by the Employment and Equality Tribunal to pay compensation.

Where an employer is found to be legally responsible for the acts of an employee this is known as vicarious liability.

An employer may not be vicariously liable for the acts of the employee carried out during the course of employment where the employer has taken all reasonable steps to prevent the discrimination, harassment or victimisation that occurred. If this defence is successful, then the employee will be personally liable to pay all of the compensation awarded by the Tribunal.

It is important therefore to ensure that all employees are trained, that policies and procedures are communicated and the processes in the policies and procedures are carried out correctly. If this does not happen then the employer's defence will fail.

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, experience and qualifications, subject to 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 irrelevant or unnecessary qualifications or long periods of experience may well be discriminatory and must be avoided.
- Making an assumption about a person's ability to do particular jobs, in relation to a protected characteristic a person's ability to do a job should be identified and relevant and this should be applied to all applicants equally.
- Offensive, discriminatory, or discouraging questions and remarks. The following are common examples of questions that could amount to direct sex discrimination, particularly if 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 asked 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 staff are briefed to develop an awareness of equal opportunities as part of their induction, immediately after appointment. Managers should ensure that all existing employees are made aware of new or amended equal opportunities legislation and policies.

Further training on equal opportunities will be given in the relevant training and development provided to staff. In particular, management courses will cover key areas such as recruitment, unconscious bias and management qualifications.

Managers and supervisors are responsible for ensuring that all staff receive equal opportunities training 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

The Equality Act 2017 requires equality in contractual terms and conditions for men and women in relation to pay, pensions and benefits.

Contracts of employment are deemed to include a 'sex equality clause' and occupational pension schemes a 'sex equality rule'. Each of these clauses will secure equal pay or an equal pension if a female and a male are both employed:-

- 'in the same employment' 'that is in the same 'establishment' or in another establishment of the same or an associated employer, where common terms and conditions are applied either generally or to relevant employees; and
- Engaged 'on like work' which is work of the same or broadly similar nature and if the differences in frequency, nature and extent are not of practical importance; or
- Engaged 'on work rated as equivalent' such rating being by a job evaluation study under various headings of demands made; or
- 'on work of equal value' if the demands made on an employee under headings such as effort, skills, knowledge and decision making are determined by a tribunal to be of equal value to those of the opposite sex, even though the work is not 'like work'.

An employer can defend an equal pay claim where it can be demonstrated that the variation between the compared employees' terms is due to a 'material factor':

- that does not involve treating one less favourably because of his or her sex; and
- if it nevertheless puts the claimant's sex at a relevant particular disadvantage, that is still objectively justified.

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 the responsibilities in their private lives within the limits of current legislation, policy and financial provision. The opportunity to achieve a work/life balance is open to all staff.

Both the terms and conditions of service and statutory rights provide options 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 discretionary 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 above options can improve effectiveness, morale, absence rates and retention.

A refusal to grant a request for flexible working without good operational reasons may also be contrary to equality or employment legislation. OHR should be consulted for early advice where a refusal is being considered. A notable risk may be a disability discrimination claim where an employee is seeking flexibility in order to care for another person who has a disability.

Equal Opportunity Issues Procedures

Grievance Procedure - for employees to raise concerns

This procedure is available to any employee who feels that they have not been treated fairly under the equal opportunities policy. Employees should follow the relevant procedure 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 discussion may be with the line manager's manager.

If the informal discussion does not resolve the grievance to the employee's satisfaction the employee may make a written submission with the support of a staff association/trade union representative.

The above outlines the general procedure available. Employees should check the detail of the grievance procedure contained in their own terms and conditions.

General advice and support is also available through the [Contact Officer](#) network.

Disciplinary and Capability Procedures

All employees are required to comply with equal opportunities legislation and policy.

Managers and supervisors will use the disciplinary or the capability procedures as appropriate to investigate any allegations in relation to equal opportunities legislation, policy or terms and conditions and take appropriate action if the allegation is found to be justified.

The relevant disciplinary and capability procedures will be those applicable to the employee's terms and conditions of service.

Fairness at Work Policy

The Fairness at Work policy is a commitment by the Isle of Man Government to promote a work culture and behaviours 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://hr.gov.im/fairness-at-work/>

Policy Appraisal

Care must be taken to ensure that policies do not discriminate or breach any of the equality legislation or the IOM Government's Policy to Promote Equal Opportunities. It is important to identify in good time any policy, which may either affect some people less favourably than others and to consider whether it would therefore be unlawful or unjustifiable, or fail to treat some people more favourably where that person has a disability. When the possibility of discrimination arises, advice should be sought from OHR.

When formulating, or reviewing a policy, the policy should be screened for its impact on the groups protected by the Equality Act. Where the screening identifies that there is the potential for a negative impact on any of the protected groups, you should consider completing an Equality Impact Assessment, subject to the significance of the policy and the principle of proportionality. Advice can be sought from OHR.

The equality impact assessment templates can be found [here](#) on SharePoint.

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



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

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